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Supreme Court of the United States

OCTOBER TERM, 1946

No. 80

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, ET AL., PETITIONERS,

vs.

PAUL A. PORTER, PRICE ADMINISTRATOR

ON WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

PETITION FOR CERTIORARI FILED APRIL 8, 1946.

CERTIORARI GRANTED MAY 13, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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ON WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

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[fol. 1]

UNITED STATES EMERGENCY COURT OF APPEALS

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. Clarence Kaskel, Morton H. Baron, Robert Herrmann, Samuel Ogus, Charles Maslow, George Willett, Harry Wiener, Charles Goldman, David Rudberg, William I. Hohauser and Sydney Maybaum, Complainants,

against

CHESTER BOWLES, Price Administrator, Respondent

COMPLAINT—Filed November 19, 1945

The complainants above named, by their attorney, Alexander Pfeiffer, for their complaint herein, respectfully show to this Court, on information and belief:

1. All of the complainants are residents of the apartment house known as 55 Central Park West, in the Borough of Manhattan, City of New York, and their principal business addresses are as follows:

Jack Parker, c/o Lustra Corporation, 40 West 25th Street, New York, N. Y.

Isidor M. Saks, 630 Fifth Avenue, New York, N. Y.

Melvin Caplan, c/o Mello Textile Co., 35 West 32nd Street, New York, N. Y.

David Werth, c/o Muller Bros., 19 Palmetto Street, Brooklyn, N. Y.

[fol. 2] C. Clarence Kaskel (retired), 55 Central Park West, New York, N. Y.

Morton H. Baron, c/o Royal Paper Corp., 11th Ave. & 25th Street, New York, N. Y.

Robert Herrmann, c/o Heinrich, Herrmann & Weiss, 1199 Broadway, New York, N. Y.

Sam Ogus, c/o Sabrett Food Products, Inc., 90 East 3rd Street, New York, N. Y.

Charles Maslow, 408 East 59th Street, New York, N. Y.

George Willett, 61 Broadway, New York, N. Y.

Harry Wiener, 128 West 31st Street, New York, N. Y.

Charles Goldman, 247 W. 38th Street, New York, N. Y.

David Rudberg (retired), 55 Central Park West, New York, N. Y.

William I. Hohauser, 1841 Broadway, New York, N. Y.

Sydney Maybaum, c/o Century Ribbon Mills, 1071 Sixth Avenue, New York, N. Y.

2. The regulation involved herein is the "Rent Regulation for Housing in the New York City Defense Area", issued and effective December 26, 1944, by the Administra- [fol. 3] tor of Price Administration, with the amendments thereto hereinafter referred to.

3. The respondent, the Administrator of the Office of Price Administration, is herein referred to as the "Administrator", and the purchasers of capital stock of 55 Corporation, a New York corporation and the owners of proprietary leases of apartments in said premises now occupied by the complainants, are herein referred to as the "purchasers."

4. On October 10, 1945, the complainants filed a joint protest with the "Administrator" pursuant to Section 203A of the Emergency Price Control Act of 1942, and the amendments thereto, which said protest was docketed as Nos. RPA-II-446-P and RPA-II-458-P. Said protest of the complainants was consolidated for the purpose of disposition by the "Administrator", with the protest filed by one Mildred S. Strauss, both having been filed against the order of the "Administrator" issued and in effect on September 28, 1945, and docketed as No. RPA-II-425-P, which said consolidation was directed and ordered by the "Administrator" in his order of November 2, 1945.

5. The protests of the complainants and said Mildred S. Strauss, were filed as aforesaid against said order issued and in effect on September 28, 1945, by the "Administrator", granting the protest of the "purchasers" of the capital stock of 55 Corporation, a New York real estate corporation, organized under the Stock Corporation Laws of the State of New York, to whom had also been given and granted by the said corporation owning the premises 55 Central Park West, New York City, proprietary leases of apartments in the said premises for a term of years as follows:

The apartment of complainant Jack Parker, known as Apt. 18-F was acquired under a proprietary lease by the

[fol. 4] "purchaser" Ada M. Becker; the apartment of complainant Isidor M. Saks, known as Apt. 15-C was acquired under a proprietary lease by the "purchaser", William Floyd Davis; the apartment of complainant Melvin Caplan, known as Apt. 17-D was acquired under a proprietary lease by the "purchaser" Charles Everett; the apartment of complainant, David Werth, known as Apt. 10-A was acquired under a proprietary lease by the "purchaser" David Gordon; the apartment of complainant C. Clarence Kaskel, known as Apt. 14-E was acquired under a proprietary lease by the "purchasers" Abraham D. and Mrs. I. Bressman; the apartment of complainant Morton H. Baron, known as Apt. 14-D was acquired under a proprietary lease by the "purchasers" Adolph G. and Alice Ruthman; the apartment of complainant Robert Herrmann, known as Apt. 18-D was acquired under a proprietary lease by the "purchaser" Elzabeth Schaeffer; the apartment of complainant Sam Ogus, known as Apt. 13-F was acquired under a proprietary lease by the "purchaser" Rhoda Cartier; the apartment of complainant Charles Maslow, known as Apt. 15-E, was acquired under a proprietary lease by the "purchaser" Samuel Kipnis; the apartment of complainant George Willett, known as Apt. 18-B, was acquired under a proprietary lease by the "purchaser" William J. McEnery; the apartment of complainant Harry Wiener, known as Apt. 19-F, was acquired under a proprietary lease by the "purchaser" Harry Goldstein; the apartment of complainant Charles Goldman, known as Apt. 16-D, was acquired under a proprietary lease by the "purchaser" Joseph L. Friedman; the apartment of complainant David Rudberg, known as Apt. 15-F, was acquired under a proprietary lease by the "purchasers" Henry and Margaret H. Zaum; the apartment of complainant William I. Hohauser, known as Apt. 9-G, was acquired under a proprietary lease by the [fol. 5] "purchaser" Julius M. Levine, and the apartment of complainant Sydney Maybaum, known as Apt. 12-F, was acquired under a proprietary lease by the "purchaser" Herman Goodman.

6. The order issued and in effect on September 28, 1945, by the "Administrator" was directed against an order issued and in effect on August 31, 1945, by the Rent Director for the New York City Defense-Rental Area, and against the order of the Acting Regional Administrator for the Office of Price Administration, Region II, issued and in

effect on September 7, 1945, denying petitions of the "purchasers" for certificates relating to evictions, (Docket No. RPA-II-425-P) and to permit said "purchasers" of the capital stock of 55 Corporation and the said owners of proprietary leases of the apartments aforementioned, to pursue their remedies at local law to evict the complainants above named, occupying their respective apartments in said premises 55 Central Park West, New York, N. Y., which orders were protested by the "purchasers" by their protest filed with the "Administrator" on September 7, 1945. The said order and opinion of the "Administrator" issued and effective on September 28, 1945, reversed and disaffirmed and revoked the denial on August 31, 1945, of the Area Rent Director for the New York City Defense-Rental Area of the said applications of the "purchasers" as well as the order issued and effective September 7, 1945, of the Acting Regional Administrator for the Office of Price Administration, Region II issued and effective September 7, 1945 which affirmed the said order of the Area Rent Director.

7. A copy of said protest filed by the complainants with the "Administrator" is on file with the "Administrator" and complainants request that the same be produced by him with the transcript of the proceedings in connection with such protest and that the same be certified by him and filed [fol. 6] with the Clerk of this Court as promptly as practical, and in no event more than twenty days after the service upon the "Administrator" of this complaint, as provided by Rule 15 of the Rules of this Court.

8. The said protest filed with the "Administrator" was, as aforesaid, a joint protest, and the Acting Regional Administrator, in considering all of the aforementioned applications of the "purchasers" and the "Administrator" in his order and opinion of September 28, 1945, aforesaid, consolidated all of said applications for review and disposition, upon the ground, among others, that there was but one structure involved and a common question applying to all applications, and the complainants, in their said protest filed with the "Administrator" requested therefore that their protest be treated as a joint and consolidated protest, made in behalf of all of them.

9. That the premises known as 55 Central Park West, New York City, is an apartment house in said city, 19 stories

in height, consisting of residential apartments of different sizes, from three to nine rooms, in which premises the complainants are tenants of the apartments hereinbefore mentioned, residing therein with their families and paying substantial rents therefor. All of the complainants, tenants of said premises, have resided therein for some time, some of them for many years, many of them having spent large sums of money in the decorating of their apartments occupied by them with their wives and children, and in some instances with young children. All of the complainants are ready, willing and able to pay the rent that may be required to be paid by them for said apartments and to comply with any and all rules and regulations of the City, State and Federal Governments having application thereto, and to do whatever may be lawfully necessary and requisite to [fol. 7] be permitted to remain in and occupy the same as their homes and places of abode for their families and themselves.

10. That for many months there has existed in the City of New York, State of New York, a great emergency as to places of residence by reason of the scarcity of apartments therein and in fact there are none to be had of a kind in anywise similar to those occupied by the complainants, and in fact, no apartments are available. Hotels are overcrowded and there is a complete lack of places of abode. Because of such emergency not alone in New York City but throughout the United States, Congress enacted legislation to protect tenants of places of residence and to prevent their ouster and eviction therefrom or the increase of their rent, which legislation is known as the Emergency Price Control Act of 1942, and the amendments thereto, and Congress constituted the Office of Price Administration as the governmental agency for all of such purposes, and the "Administrator" was authorized by such legislation to enact regulations to effectuate the same. To all of such Congressional Legislation and the Regulations of the Office of Price Administration, reference is hereby made.

11. Victor M. Earle, of the firm of Earle & Calhoun, real estate brokers of the City of New York and managing agents and realtors in such city, and one Alexander B. Carver were the owners of the entire capital stock of said New York real estate corporation, known as 55 Corporation, owning as aforesaid, the fee of said premises 55 Central Park West,

New York City, subject to a first mortgage on May 29, 1945, of $1,683,000.08 and accrued interest of $4,207.50, totaling $1,687,207.58, and a second mortgage in the principal sum of $12,000, plus accrued interest of $65, totaling $12,065, and amounting in the aggregate to the sum of $1,699,272.58, and sought to convert part of the premises aforementioned [fol. 8] into a cooperative and to sell the shares of stock held by them of said owning corporation to purchasers of the same, with proprietary leases of apartments therein, the purchase price of said apartments to aggregate about $390,000 over and above a first mortgage of $1,500,000, though the said Victor M. Earle had made application as recently as March, 1945, in behalf of said owning corporation and had sworn in such application for the reduction of the New York assessed value of said premises, that said premises were worth not more than $1,000,000.

12. On March 5, 1945, said Earle & Calhoun, acting for and in behalf of said Earle and Carver and said owning corporation, having theretofore conceived the idea as aforesaid of converting certain of said apartments in said premises into cooperatives and selling shares of stock of said corporation to persons who would purchase the same and acquire at the same time proprietary leases of said apartments, wrote a certain letter to Maurice H. Whitebook, Chief Attorney for the New York City Defense Rental Area, requesting an interpretation concerning the right of purchasers of cooperative apartments in 55 Central Park West, to obtain certificates relating to eviction under the provisions of Subdivision II of Section 6(b)(2) of the Rent Regulations of the Office of Price Administration upon the claim that substantial hardship would result from the failure to issue such certificates. To this letter were attached certain affidavits and there were certain replies thereto and conferences were held, and then an alleged interpretation of hardship was granted by the Office of Price Administration on March 23, 1945, to the said Earle and Carver, the owners of such stock, so as to relieve them and purchasers of such stock and owners of proprietary leases, from the effect of an amendment of the "Administrator" to the regulations aforementioned, which amendment is known as Section [fol. 9] 6(b)(3) of the Rent Regulations for Housing as amended, effective February 17, 1945. Said amendment, as well as the provisions of Section 6(b)(2) of the Rent Regu-

lations for Housing, are hereby referred to and made a part hereof, and for the sake of brevity are referred to without being verbatim set forth herein. All of the letters aforementioned, the interpretation and affidavits which formed part of said letters, became part of the record made in connection with applications thereafter filed by the "purchasers" of said capital stock of said 55 Corporation and the holders of proprietary leases of apartments for certificates of eviction of the complainants from their apartments, which record also consists of testimony taken by Ira A. Schiller, Chief Branch Attorney of the New York City Defense-Rental Area, and exhibits and other papers and documents introduced before him, which he considered in accordance with his designation to conduct an oral hearing upon said applications, pursuant to Section 1300.211 of Revised Procedural Regulation No. 3, of the Office of Price Administration, having been duly appointed and designated for that purpose to pass upon the questions involved in the applications of the "purchasers" of the said stock aforementioned and the holders of proprietary leases, for such certificates of eviction, and to report his findings thereon. Said Ira A. Schiller, Chief Branch Attorney, made and delivered his report and opinion upon the record made before him to the Rent Director for the New York City Defense Area with whom such report and opinion was required to be filed. Said report, consisting also of an analysis of the testimony taken before him, the exhibits and all other papers relating thereto were, together with such testimony, exhibits and all other papers, presented to and considered by Walter M. Hort, said Area Rent Director of New York City Defense Rental Area, and by Leo F. Gentner, Acting Regional Administrator for the Office of Price Administra-[fol. 10] tion, Region II, and the same have all been forwarded to and filed with, and are now in the Office of the "Administrator" at Washington, D. C., and the complainants request that all of said papers, testimony, reports, opinions and exhibits be filed with the Clerk of this Court by the "Administrator" inasmuch as the same were considered by him when he made his order of Septeniber 28, 1945, protested by the complainants as aforementioned.

13. That the said report of Ira A. Schiller, Chief Branch Attorney, directed to said Walter M. Hort, Area Rent Director, New York City Defense-Rental Area, resulted in his

order dated, issued and effective on August 31, 1945, denying the applications aforesaid of the purchasers of the capital stock of said 55 Corporation, for certificates of eviction, which order was, as aforesaid, affirmed and confirmed by the Acting Regional Administrator (Region II), by order dated, issued and effective on September 7, 1945.

14. The "Administrator", by his order issued and effective on November 2, 1945, dismissed the protest aforementioned filed with him by the complainants, upon the ground that Section 203-A of the Emergency Price Control Act of 1942, as amended, provides that only persons subject to a regulation or order may file protests thereto with the "Administrator", and that since the Rent Regulations and Orders issued by the "Administrator" or his representatives prohibit or require action only by landlords or their agents, only such persons and not tenants are subject to such regulations and orders within the meaning of the Act aforementioned, and that the Revised Procedural Regulation, #3, issued pursuant to the authority granted in said section of the Act, makes no provision for the filing of a protest by a tenant, and that accordingly the protest filed by the complainants does not conform in a substantial [fol. 11] respect to the requirements of said Regulation, within the meaning of Section 1300.220 of said Regulation.

15. The complainants have been aggrieved by the dismissal of their protest by the "Administrator", in that Section 203-A of the Emergency Price Control Act of 1942, as amended, provides that at any time after the issuance of any regulation or order under Section 2 of the said Emergency Price Control Act, or in case of a price schedule at any time after the effective date thereof, specified in Section 206 thereof, any person subject to any provision of such regulation, order or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provisions and affidavits or other written evidence in support of said objections, and Section 204 of the Emergency Control Act provides that any person who is aggrieved by the denial or partial denial of his protest may, within 30 days after such denial, file a complaint with the Emergency Court of Appeals specifying his objections and praying that the regulation, order or price schedule protested be enjoined and set aside in whole or in part, and said Emergency Price Con-

trol Act of 1942; further provides that the said Emergency Court of Appeals may set aside such order or price schedule, which is not in accordance with law or is arbitrary or capricious.

16. The complainants claim and allege that they are persons who, in accordance with Section 203-A of the Emergency Price Control Act, are subject to the order of the "Administrator" and particularly of the order made and issued by him and effective on September 28, 1945, authorizing the "purchasers" of the capital stock of said 55 Corporation aforementioned to pursue their remedies in the local courts for the eviction of the complainants from their apartments in said premises and that they are seriously [fol. 12] affected by such order and necessarily subject thereto, for its effect is to authorize their eviction from their homes, to prevent which, among other things, the Emergency Price Control Act was enacted by Congress. Said complainants further contend and allege that any Rent Regulations and Orders of the Office of Price Administration, which seek to prevent the filing of protests by them and their right to review any order thereon by the "Administrator" are inconsistent with and in contravention of the provisions of the Emergency Price Control Act of 1942, as amended, and are void and of no effect, and that under the provisions of said Emergency Price Control Act, they were authorized to and had the right to file their protest with the "Administrator" for the reason, among others, that they were subject to the order made by him and were parties to all of the proceedings before the Rent Director and the Acting Regional Administrator aforementioned, and the order of the "Administrator" in reversing the Rent Director and the Regional Administrator, permits and subjects them to the commencement in the local courts of proceedings for their eviction from the apartments occupied by them in the premises aforesaid.

17. The complainants are further aggrieved by the dismissal of their profest by the "Administrator" and by his order of Sept. 28, 1945, for the additional reasons following which are also set forth in their protest aforementioned filed with the "Administrator" on October 10, 1945 and also relied upon by the complainants herein, namely:

(a) The "purchasers" who sought the aforementioned certificates of eviction failed to comply with Sec-

tion 6(b) (2) of the Rent Regulation for Housing in the New York City Defense Area, and in each individual case paid in cash less than the proportionate share of the 20% of the stock purchase price required to be paid in good faith under the Section aforementioned, in that the "purchasers" of the stock of the owning corporation, under said Regulation, were required to pay the [fol. 13] proportionate part of 20% in cash of the purchase price at the time of purchase, which purchase price would include the amount of the underlying obligations of the owning corporation, attributable to each apartment respectively at the time of the stock purchase, and that in all of the purchases here involved, the purchase of the stock was completed by payment and notice of acceptance sent to the "purchasers" no later than May 29, 1945. Although prior to the filing of the petitions seeking certificates of eviction, the liens or underlying obligations were reduced, the mortgage indebtedness existing against the property here involved, on May 29, 1945, the date of the purchases, consisted of a first mortgage in the principal amount of $1,683,000.08, plus accrued interest of $4,207.50, totaling $1,687,207.58; and a mortgage in the principal amount of $12,000 plus accrued interest of $65 totaling $12,065, and altogether the mortgage indebtedness with accrued interest, aggregated $1,699,272.58 at the time of the stock purchase.

Applying the formula adopted under the regulations of the Office of Price Administration in testing the 20% payment required by Section 6(b)(2), a copy of which is annexed to the said protest filed by the complainants, for all purposes to be considered a part hereof when filed in this court by the "Administrator" as herein requested, the "purchasers" failed to pay 20% in cash as required by Section 6(b)(2) at the time of purchase, and such failure of compliance is to the extent of 7.28% of the purchase price, all of which also appears under the First Finding of Fact, set forth in the report of Ira A. Schiller, Chief Branch Attorney, also annexed to said protest. The "Administrator's" finding and opinion as set forth in his opinion of September 28, 1945, that the date of the application for certificates of eviction is the determinative date as to the [fol. 14] underlying encumbrances upon the property and

the amount of cash required to be paid under the regulations of the Office of Price Administration, is clearly erroneous. The determinative date has always been and still is the date of the purchase, as appears by the form "G-9B (4/45)" of the Office of Price Administration, a copy of which is annexed to said protest filed by the complainants.

The opinion of the "Administrator", dated and issued September 28, 1945, also refers to the fact that the shares of stock of the owning corporation had been sold to the "purchasers" on May 29, 1945, for the sum of $389,300, and that *then* the "purchasers" became entitled to the issuance to them of 38.93 shares of the capital stock of the corporation, and on that date, when the purchase had been effected and the "purchasers" were entitled to their share of stock, the amount of the mortgages upon the property, with accrued interest, aggregated $1,699,272.58, which complainants contend indicates that the determinative date for determining the amount of the encumbrances was May 29, 1945 and not as concluded by the "Administrator".

The finding in the said opinion accompanying the "Administrator's" order granting protest, dated September 28, 1945, with reference to the compliance by the "purchasers" aforementioned of Section 6(b)(2) of the Rent Regulation is therefore clearly contrary to such Regulation and to the record made before the Chief Branch Attorney, to which reference is again made.

(b) Messrs. Earle and Carver, who were the sponsors of the plan for a cooperative, and their agents, Earle & Calhoun, were not prejudiced by any delay in the issuing of the interpretive letter of March 23, 1945, for the reason [fol. 15] that it appears from the record made, the exhibits and all other papers and documents forming part of the record herein, as submitted by Ira A. Schiller, Chief Branch Attorney, upon which the order of Walter M. Hort, Area Rent Director was based, and the order of the Acting Regional Administrator, was founded, and now on file with the "Administrator" that there was no prejudice or delay resulting from any alleged delay in the issuing of the letter of interpretation on March 23, 1945, for the sponsors of the plan had actively proceeded with the promulgation of the plan and were actively soliciting purchasers in the

meantime, and any delay in issuing the interpretive letter had no prejudicial effect upon promulgating and consummating the plan, as appears by such record made aforementioned, and as set forth in the report of said Ira A. Schiller, Chief Branch Attorney, under his Second Finding of Fact, where references to the stenographer's minutes before him and documents are made, which said report, including the said Second Finding of Fact, is annexed to the protest filed by the complainants herein and on file with the "Administrator."

(c) The said letter of interpretation of March 23, 1945, was unjustified, uncalled for, unwarranted and was secured without basis in fact or in law, or in the Regulations of the Office of Price Administration, and only as a result of the intervention of one Arthur D. Koppel, an officer of the Metropolitan Fair Rent Committee, a voluntary organization of property owners looking after their own interests and not of tenants for whose benefit, among others, the Congressional legislation aforementioned was enacted and the Office of Price Administration was constituted, all of which appears from the record made and the report of Ira [fol. 16] A. Schiller, Chief Branch Attorney. The order and opinion of the "Administrator", based upon said letter of interpretation is likewise without warrant, authority and validity, in that such letter of interpretation should not have been issued and the sponsors of the plan should have been required to comply with the Regulations of the Office of Price Administration in effect on and after February 17, 1945. The alleged facts presented to the "Administrator" upon which such letter of interpretation was granted did not establish any hardship nor come within the provisions as to hardship of the Regulations of the Office of Price Administration.

(d) The facts and documents submitted by Earle and Carver and the sponsors of the plan for the cooperative, to the Office of Price Administration, seeking the letter of interpretation as to hardship, contained misrepresentations and was a fraud upon the "Administrator" in that statements were contained in the said affidavits of Victor M. Earle, that 36 non-tenants of the premises aforementioned were definitely interested in the purchase of an apartment in said premises prior to February 1, 1945, which statement was false and untrue, and the further statement

contained therein, that 29 tenants in the building were definitely interested in the purchase of an apartment prior to February 1st, 1945 was likewise false and untrue, as well as the statement that on February 20, 1945, there were 24 tenants in the building very much interested in the purchase of apartments. Such statements were made to the "Administrator" and his subordinates to induce the issuance of the letter of interpretation of March 23, 1945, and as a result of the falsity thereof, the letter of March 23, 1945 should have been disregarded and considered void and of no effect and fraudulently obtained. The evidence, documents [fol. 17] and papers, showing such fraud and misrepresentation are on file in the office of the "Administrator", and are all fully analyzed and set forth under the Third Finding of Fact in the report of said Ira A. Schiller, Chief Branch Attorney, which said report, including the said Third Finding of Fact is annexed to the protest filed by complainants herein with the "Administrator". The fact that such misrepresentation was made and such fraud practiced, also appears from the opinion of the "Administrator", dated September 28, 1945, aforementioned, where he refers to the evidence as to hardship, submitted to the Office of Price Administration by the sponsors of the plan, to induce the issuance of the letter of interpretation and where he states that he examined with care the evidence adduced for the purpose of showing that the letter of March 23rd was obtained through fraud and misrepresentation, and that although there is some variation between the representations of Earle and the facts, it does not disclose that the letter of March 23rd was obtained through fraud and misrepresentation. The complainants contend and allege that if Victor M. Earle, as set forth in the opinion of the "Administrator", varied from the fact in his affidavits submitted to the "Administrator" to induce him to issue the letter of interpretation, that such conduct is misrepresentation and fraud, for if there was a variance from the fact, as found by the "Administrator", the true known facts were not presented, and that constitutes misrepresentation and fraud, and the letter of interpretation should therefore not have been permitted to remain in effect.

(e) The owning corporation is not a cooperative corporation or association as defined by the Co-Operative

Corporation Laws of the State of New York and therefore [fol. 18] does not come within the provisions of the laws and regulations of the Office of Price Administration as to eviction of tenants of co-operative apartments of a building owned by a cooperative corporation or association.

(f) The sponsors of the plan and the owners of the stock sold to the "purchasers", throughout the proceedings here involved, acted in bad faith, in that they knew that the property owned by the owning corporation had no equity over and above its underlying encumbrances and were seeking to sell to the complainants, who were tenants thereof, and the public, the shares of stock of the owning corporation at a sum which resulted in the receipt by them of the sum of about $390,000, though the shares of stock of said corporation, sought to be sold, were worthless, there was no equity in the property, and the plan for the sale of said shares of stock, upon the price aforementioned, was fraudulent and based upon bad faith, misrepresentation and a scheme to obtain a large sum of money as the result of the sale of apartments in the property involved, in which there was no equity over and above the underlying encumbrances. There was further bad faith on the part of Victor M. Earle, one of the owners of said stock, in that he used the shares of stock of the owning corporation which he had agreed to sell to the "purchasers" aforementioned, and who had paid for the same, in order to enable him and his son to obtain proprietary leases to consummate the plan aforesaid, although the shares of stock had been sold and paid for by such "purchases" on or before May 29, 1945. Said Victor M. Earle used such shares of stock and applied the same to his own personal use, by depositing the shares with the Chase National Bank of New York City, as collateral security for a loan to himself from said bank [fol. 19] of $40,000, which he used, together with $1200 obtained from his wife, to acquire such proprietary leases, all of which appears in the report of Ira A. Schiller, Chief Branch Attorney, under his "Recommendations and Reasons Therefor", annexed to the protest filed by complainants herein with the "Administrator", to which reference is hereby made. Further bad faith is shown, as set forth in the "Analysis of the Evidence Taken", as aforementioned, in the report of said Ira A. Schiller, wherein it appears that said Victor M. Earle, one of the sponsors of

the plan and holder of shares of stock of the owning corporation which were sold to the said "purchasers", attempted to prevent certain important witnesses from attending the hearing before him and giving their evidence, by communicating with them while the hearings were pending, which said witnesses were persons whose names appeared upon the affidavits submitted by him to the Office of Price Administration, to induce the issuance of the letter of interpretation aforesaid.

(h) That the entire course of conduct of the "Administrator" and his subordinates, with relation to the issuance of the letter of interpretation aforementioned as well as the orders of the "Administrator", effective on September 28, 1945 and November 2, 1945, directed to said "purchasers" as aforementioned, permitting them to seek their remedy in the local courts for the eviction of the complainants from the apartments in the premises aforesaid, occupied by them, and dismissing the protests filed by the complainants, was and is without justification, warrant, authority or basis in fact, and was and is unfair, unreasonable, arbitrary, inequitable and capricious and not in accordance with law.

18. The following is a statement of the relief requested by the complainants:

[fol. 20] (a) That the order of the "Administrator" dated and effective November 2, 1945, dismissing the protest filed with him by the complainants on October 10, 1945, be enjoined, set aside and annulled;

(b) That the order of the Administrator, dated and effective September 28, 1945, authorizing the "purchasers" to pursue their legal remedies in the local courts for the eviction of the complainants from their apartments in 55 Central Park West, New York City, be in all things enjoined, set aside and annulled;

(c) That the orders of the Rent Director, dated and effective on August 31, 1945, and the order of the Acting Regional Administrator, dated and effective on September 7, 1945, denying the applications of the "purchasers" for certificates authorizing them to commence proceedings in the local courts for the evic-

tion of the complainants from their apartments in 55 Central Park West, New York City, be reinstated and in effect.

(d) That the complainants have such other and further relief as to the Court may seem just and proper.

Alexander Pfeiffer, of the firm of Pfeiffer & Crames,
Attorneys for Complainants.

New York, N. Y. November 14, 1945.

All papers may be served upon: Alexander Pfeiffer, of the firm of Pfeiffer & Crames, 551 Fifth Avenue, New York 17, N. Y.

[fol. 21] [Stamp:] United States Emergency Court of Appeals. Filed Dec. 1, 1945. Herman C. Beasley, Clerk

UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. Clarence Kaskel, Morton H. Baron, Robert Herrmann, Samuel Ogus, Charles Maslow, George Willett, Harry Wiener, Charles Goldman, David Rudberg, William I. Holmauser and Sydney Maybaum, Complainants,

against

CHESTER BOWLES, Price Administrator, Respondent

SIRS:

Please Take Notice that on the annexed affidavit of Louis L. Tetelman, sworn to the 29th day of November, 1945, and on all proceedings heretofore had herein, the undersigned will move this Court on the 5th day of December, 1945, at Fifth and E Streets, N. W., Washington, D. C., by the submission of the within papers on said date, for an order permitting the purchasers named in paragraph marked "5" of the complaint to intervene as parties in interest, and for such other and further relief as to the Court may be meet and proper.

Dated: New York, November 29, 1945.

Yours, &c., Louis L. Tetelman, of the Firm of Tetelman & Tetelman, Attorneys for Purchasers named in paragraph marked "5" of the complaint, Office & P. O. Address, 1450 Broadway, New York 18, N. Y.

To: Alexander Pfeiffer, Esq., of the Firm of Pfeiffer & Crames, Attorneys for Complainants, Office & P. O. Address, 551 Fifth Avenue, New York 17, N. Y.; Administrator of the Office of Price Administration, Washington, D. C.

[fol. 22] UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. Clarence Kaskel, Morton H. Baron, Robert Herrmann, Samuel Ogus, Charles Maslow, George Willett, Harry Wiener, Charles Goldman, David Rudberg, William I. Hohauser and Sydney Maybaum, Complainants,

against

CHESTER BOWLES, Price Administrator, Respondent

STATE OF NEW YORK,
County of New York,
City of New York, ss:

Louis L. Tetelman being duly sworn, deposes and says:

I am an attorney and counselor at law and a member of the firm of Tetelman & Tetelman, located at 1450 Broadway, New York 18, N. Y.

I am a member of the Bar of the above named Court, having been admitted to practice as an attorney at law on the 28th day of November, 1945.

I am counsel for all of the purchasers named in paragraph marked "5" of the complaint, dated November 14, 1945, filed herein.

With the filing of the original applications for certificates relating to eviction in the local Office of the New York City Defense Rental Area, and thereafter during the proceedings before the hearing officer in said office, and upon the filing of the petition for review in the Office of the Regional Administrator for the Office of Price Administration, and upon the filing of the protest of the applicants with the Office of Price Administration in Washington, D. C., [fol. 23] I have acted as counsel for all of said applicants named as purchasers in paragraph marked "5" of the complaint. I am fully and completely acquainted with all of the facts and circumstances in the above entitled matter.

All of said purchasers named in paragraph marked "5" of the complaint are directly interested in and concerned about the certificates now outstanding permitting them to invoke the local law to evict the complainants. Three of the purchasers have instituted proceedings in the local Court to evict the tenants occupying their apartments and the others intend to institute their proceedings on or after

December 14, 1945, as permitted by the certificates relating to eviction.

I am of the opinion that with the issuance of the order in effect September 28, 1945, by the Administrator of the Office of Price Administration, the question of the issuance of certificates relating to eviction was finally determined and consequently the complainants are without authority or right to file a complaint in this Court and this Court has no jurisdiction.

It is, therefore, respectfully requested that the purchasers named in paragraph marked "5" of the complaint be permitted to intervene.

Louis L. Tetelman.

Sworn to before me this 29th day of November, 1945. Lillian Keisler, Commissioner of Deeds. N. Y. Co. Clk. No. 83, Reg. No. 5-K-37. Kings Co. Clk. No. 30, Reg. No. 5-K-30. Bronx Co. Clk. No. 15, Reg. No. 5-K-21. Commission expires December 28, 1945.

[fol. 24] [Stamp:] United States Emergency Court of Appeals. Filed Dec. 3, 1945. Herman C. Beasley, Clerk

IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, et al.,

v.

CHESTER BOWLES, Price Administrator

MOTION OF ADMINISTRATOR TO DISMISS COMPLAINT

Now comes Chester Bowles, Price Administrator of the Office of Price Administration, Respondent, by his duly authorized attorney, and, pursuant to Rule 13 of the Rules of this Court, moves to dismiss the complaint filed herein on the ground that Complainants have no standing to invoke the jurisdiction of the Court.

The accompanying memorandum sets forth the basis of this motion and the argument in support thereof.

Respectfully submitted, Richard H. Field, General Counsel.

[fol. 25] [Stamp:] United States Emergency Court of Appeals. Filed Dec. 3, 1945, Herman C. Beasley, Clerk.

IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, et al.

v.

CHESTER BOWLES, Price Administrator

MEMORANDUM IN SUPPORT OF MOTION OF ADMINISTRATION TO DISMISS COMPLAINT

Statement of Facts

On June 14, 1945, David Gordon and twenty-four other purchasers of stock in the 55 Corporation, a New York Corporation, filed petition for certificates of eviction pursuant to Section 6(b) (2)[1] of the Rent Regulation for Housing in the New York City Defense-Rental Area, authorizing them to proceed under local law to evict Complainants from certain apartments located in the building at 55 Central Park West, New York City. These twenty-five petitioners had purchased capital stock of the 55 Corporation under a share-ownership plan entered into between themselves and the former owners of all the capital stock of the corporation, under which the petitioners became entitled, by reason of their acquisition of such stock, to proprietary [fol. 26] leases covering certain apartments in the premises owned by the corporation. The petitioners, stock purchasers, were thus seeking possession of those apartments

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[1] Section 6(b)(2) provides:

* * * *Occupancy by purchasers.* A certificate shall be issued authorizing the pursuit of local remedies to remove or evict a tenant of the vendor, for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after November 1, 1943, only as provided in this paragraph (b)(2) * * *.

[2] 8 F. R. 13914.

covered by their proprietary leases in filing their petitions for certificates relating to eviction.[3]

On August 31, 1945 the Rent Director for the New York City Defense-Rental Area issued several orders denying the petitions for certificates of eviction. On September 4, 1945 the petitioners filed applications for review of the Rent Director's orders with the Regional Administrator of the Office of Price Administration for Region II, and on September 7, 1945 the Regional Administrator consolidated and denied the applications for review.

On September 7, 1945 the petitioners filed a protest with the Administrator against the denial of their applications for review. This protest was docketed as "In the Matter of David Gordon, et al., Docket No. RPA-II-425-P." On September 28, 1945 the Administrator issued two orders, with an accompanying opinion,[4] granting the protest, and authorizing the petitioners on and after December 14, 1945 to pursue their remedies at local law to evict the existing tenants of the apartments for which the petitioners possess proprietary leases.[5]

[fol. 27] On October 10 and 25, 1945, David Werth and fourteen other existing tenants, and Mildred S. Strauss, likewise an existing tenant, filed protests against the orders issued by the Administrator on September 28, 1945 authorizing the petitioners to pursue their remedies at local law to evict these existing tenants. These protests were docketed as "In the Matter of David Werth, et al., Docket No. RPA-II-446-P," and "In the Matter of Mildred S. Strauss, Docket No. RPA-II-458-P," respectively. On November 2, 1945 the Administrator issued an order consolidating

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[3] Section 6(b)(3) of the Regulation, added by Amendment 17, effective February 17, 1945 provides that no certificates of eviction shall be issued for occupancy by purchasers of stock in a cooperative, with certain stated exceptions. If a petitioner is seeking a certificate under one of these exceptions, he files and the certificate is issued pursuant to Section 6(b)(2). The instant petitioners, who filed under the exceptions specified in Section 6(b)(3), therefore sought certificates under Section 6()(2) of the Regulation.

[4] 3 Opinions & Decisions (OPA) p. 3301.

[5] Three petitioners were authorized to pursue their remedies at local law on or after October 1, 1945.

and dismissing these two protests, pursuant to Section 203(a) of the Emergency Price Control Act of 1942, as amended, and Section 1300.200 of Revised Procedural Regulation No. 3, issued thereunder, on the ground that they did not comply with the provisions of the statute and regulation since Complainants, being tenants, were not "subject to" any provision of the orders which they sought to protest. The Complaint in this case has been filed by the fifteen tenants who filed the protest docketed as "In the Matter of David Werth, et al., Docket No. RPA-II-446-P."

Argument

Since Complainants were not "subject to" the provisions of the orders of September 28, 1945 authorizing the petitioners to pursue their remedies at local law, because the orders neither required nor prohibited action on the part of Complainants, the protests were properly dismissed.

Section 203(a) of the statute provides that "any person subject to" a provision of a regulation or order issued under section 2 may file a protest against such provision. [fol. 28] In accordance with the clear indication from the legislative history of the statute,[6] the Administrator has consistently construed this phrase as applying generally to persons of whom action was prohibited or required by a particular provision of a regulation or order.[7] This con-

[6] Sen. Rep. No. 931, 77th Cong. 2d Sess. (1942) 22: "Section 203(a) is designed to provide the advantages of a hearing, in a manner consistent with the need for expeditious determinations, to all persons who are required to obey the provisions of regulations or orders under section 2."

[7] Procedural Regulation No. 1, 7 F. R. 971, Feb. 13, 1942; Procedural Regulation No. 3, 7 F. R. 3936, May 25, 1942; *Matter of James B. Wigdor*, Docket No. RPA-II-135-P, decided August 19, 1944; Memorandum in support of Motion of Administrator to dismiss complaint in *J. H. Whitten, tenant* v. *Bowles, Price Administrator*, and *W. J. Folsom, landlord*, (E. C. A.) No. 107; *Matter of Beatrice A. Perew*, Docket No. RPA-II-9-P, decided August 3, 1943; *Matter of Mrs. W. O. Cooper*, Docket No. RPA-V-90-P, decided October 8, 1945; *Matter of Wm. M. and Mary Raines*, Docket No. RPA-V-89-P, decided September 13, 1945.

temporaneous administrative interpretation of the statute contained in Procedural Regulation No. 1[8] has already been approved by this Court as reasonable. *Buka Coal Company* v. *Brown*, 133 F. (2d) 949 (E. C. A., 1943).

Revised Procedural Regulation No. 3[9] provides, as did [fol. 29] Procedural Regulation No. 3,[10] for the filing of a protest only by landlords of whom action is prohibited or required. This interpretation of the phrase "person subject to" for purposes of rent regulations and orders is consistent with that approved in the *Buka* case. It is based on the fact that rent regulations and orders neither prohibit nor require action on the part of tenants. For example, while the Rent Regulation prescribes maximum rents, tenants may, without legal sanction against them, pay a lesser or greater rental. Likewise, orders increasing or decreasing maximum rents do not prohibit or require action on the part of tenants, since they merely prescribe maximum rents which the landlord is legally entitled to receive *if* he can arrive at a bargain with a tenant for that rental. Similarly, the issuance of a certificate of eviction, as in this case, does not prohibit or require any action on the part of

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[8] The only exception recognized by the Administrator has been in the case of a producer of an agricultural commodity who complains that a particular price regulation violates section 3 of the Emergency Price Control Act or the Stabilization Act—sections designed to protect such producers against the depressing effect upon their prices of the processors' ceilings. Sec. 24 of Revised Procedural Regulation No. 1 provides in part as follows: "* * * Provided, however, That a producer of an agricultural commodity shall be considered to be subject to a maximum price regulation for the purpose of asserting any right created by section 3(a) of the Emergency Price Control Act of 1942 or section 3 of the Act of October 2, 1942 (Pub. Law 729, 77th Cong.) for the benefit of producers of such an agricultural commodity. Any protest filed by a person not subject to the provision protested, or otherwise not in accordance with this revised procedural regulation, may be dismissed by the Administrator."

[9] Section 1300.216.

[10] 7 F. R. 3936.

a tenant, but merely authorizes a landlord to pursue his remedies at local law.

In the instant case, the orders issued by the Administrator on September 28, 1945, authorizing the petitioners to pursue their remedies for eviction in accordance with local law, did not operate to evict the Complainant-tenants, but merely left them in the same position in which they would have been had the regulation contained no provision requiring the petitioners to obtain a certificate before pursuing local remedies for eviction. It is therefore manifest that the authorization to the petitioners did not forbid or require any action on the part of Complainants. Nor is there anything in the statute to indicate that special legal rights [fol. 30] were intended to be inferred upon tenants generally or in this particular situation. Since Complainants are not "subject to" the provisions of the orders in question, their protest against such orders was properly dismissed.

For the reasons given above the complaint should be dismissed.

Respectfully submitted, Richard H. Field, General Counsel.

[fol. 31] [Stamp:] United States Emergency Court of Appeals. Filed Dec. 6, 1945. Herman C. Beasley, Clerk

IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, et al.,

v.

CHESTER BOWLES, Price Administrator.

Now come Jack Parker, et al., by their duly authorized attorney, Alexander Pfeiffer, of Pfeiffer & Cranes, and move to extend the complainants' time to file an answer to the motion of Chester Bowles, Administrator of the Office of Price Administration, pursuant to Rule 13 of the Rules of this Court, to dismiss the complaint.

The annexed affidavit sets forth the reason for this application.

Dated: New York, December 3, 1945.

Respectfully submitted, Alexander Pfeiffer of the firm of Pfeiffer & Crames, Attorneys for the Moving Parties Herein, Office & Post Office Address: 551 Fifth Avenue, New York 17, N. Y.

[fol. 32] IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, et al.,

v.

CHESTER BOWLES, Price Administrator

STATE OF NEW YORK,
County of New York, ss:

Charles N. Wald, being duly sworn, deposes and says: I am a member of the firm of Pfeiffer & Crames and make this affidavit in support of the annexed motion.

Since Tuesday, November 28th, 1945, Mr. Alexander Pfeiffer, the attorney for the complainants herein, has been confined to his home in bed, suffering from virus pneumonia. He is now being attended by day and night nurses, and his physicians, Dr. N. W. Stark and Dr. George Baehr, have refused permission to discuss any office matters with him. It is not expected that Mr. Pfeiffer's condition will permit him to leave his bed at home for at least two weeks from date.

In the meantime, on December 4, 1945, at about 1 P. M., this office was in receipt of a copy of the motion of the Price Administrator to dismiss the complaint, pursuant to Rule 13 of the Rules of this Court. In accordance with the rules of this Court, the complainants have five days' time within which to file an answer to the said motion. Since the motion was served by mail, said complainants would have three additional days, or a total of eight days.

In view of the foregoing statement, it is obvious that no adequate answer can be submitted within the time limited by the rules. Mr. Pfeiffer has been handling this matter

personally from its inception and is the only one who is thoroughly familiar with it.

In consequence of the foregoing, I communicated with Mr. Hyman, the attorney in charge of the Office of Price Administration, at Washington, D. C., who is in charge of this matter and advised him of the situation. Said attorney [fol. 33] stated that he would have no objection to an extension of three weeks within which the complainants may file their answer to the Price Administrator's motion to dismiss.

Wherefore, I respectfully request that the time of the complainants to file an answer to the Price Administrator's motion to dismiss be extended for a period of three weeks from the present expiration date.

Charles H. Wald.

Sworn to before me this 5th day of December, 1945. Rose Hoffpauir, Commissioner of Deeds, N. Y. C., New York Co. Clk's. No. 25, Reg. No. 7-H-22. Commission Expires March 13, 1947.

[fol. 34] [Stamp:] United States Emergency Court of Appeals. Filed Dec. 6, 1945. Herman C. Beasley, Clerk

UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, et al.,

v.

CHESTER BOWLES, Price Administrator

ORDER

Upon consideration of Complainants' motion for enlargement of time until January 2, 1946, to file an answer to the Respondent's motion to dismiss the complaint herein, and counsel for Respondent having stated that he has no objection thereto,

It is Ordered that Complainants' motion be, and it hereby is, granted.

By the Chief Judge.

Teste: Herman C. Beasley, Clerk.

December 6, 1945.

[fol. 35] [Stamp:] United States Emergency Court of Appeals. Filed Dec. 7, 1945. Herman C. Beasley, Clerk

UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. Clarence Kaskel, Morton H. Baron, Robert Herrmann, Samuel Ogus, Charles Maslow, George Willett, Harry Wiener, Charles Goldman, David Rudberg, William I. Hohauser and Sydney Maybaum, Complainants,

against

CHESTER BOWLES, Price Administrator, Respondent

The complainants, by their attorneys, Pfeiffer & Cramer, object to the petition to intervene herein, dated November 29, 1945, and filed with the Clerk of this Court on December 1, 1945, upon the following grounds:

1. The United States Emergency Court of Appeals is a statutory Court, which functions in accordance with its duly adopted rules, and there is nothing in the rules of said Court which authorizes this application on the part of the purchasers named in Paragraph "5" of the complaint, to intervene in said action.

2. Said application is for leave to intervene, not as amicus curiae, but as parties in interest, when in fact said purchasers are not parties in interest, the dispute existing between the complainants, on the one hand, and the Price Administrator of the Office of Price Administration, on the other.

3. The action is brought by the complainants, against whom an alleged prejudicial order was made by the Price Administrator of the Office of Price Administration, and is brought against the Price Administrator, who made said alleged prejudicial ruling. Such an action is brought in conformity with the provisions of the United States Emergency Price Control Act and with the rules of this Court. It is not provided either in the Emergency Price Control Act or in the rules of this Court that such an action must be [fol. 36] brought against parties like the purchasers herein,

who might be interested in the result. Had such been the intention, adequate provision could easily have been made for the joinder of such alelged interested parties.

4. If the purchasers herein were permitted, on their own application, to join the action as parties in interest, then in every similar proceeding various of the parties might seek to be joined as parties in interest, resulting in cumulative memoranda and argument and a far more ponderous procedure than the procedure specifically provided in the rules of this Court.

5. There is no reason or justification for the intervention of these parties, for, in any event, their interests are adequately protected by the Price Administrator. The Price Administrator is in a position to protect their interests, because he made the order upon a consideration of all of the proofs submitted by the complainants and said purchasers.

6. In the affidavit of Louis L. Tetelman, submitted in support of the application to intervene, Mr. Tetelman states that he is of the opinion that "the complainants are without authority or right to file a complaint in this Court, and this Court ha sno jurisdiction." If that is the basis for this application to intervene, then it is without force, because the Administrator of the Office of Price Administrator filed a motion with this Court on December 3, 1945, pursuant to Rule 13 of the Rules of this Court, to dismiss the complaint on the ground that the complainants have no standing to invoke the jurisdiction of the Court. So that, every question which has been raised by Mr. Tetelman has now been submitted to this Court for determination.

For all of the foregoing reasons, the complainants above named object to the application to intervene herein.

Dated, New York, December 4, 1945.

Alexander Pfeiffer, by C. H. Wald, Alexander Pfeiffer, of the firm of Pfeiffer & Cramer, Attorneys for Complainants, Office & P. O. Address: 551 Fifth Avenue, New York 17, N. Y.

[fols. 33-35] [File endorsement omitted.]

[fol. 36] IN THE UNITED STATES EMERGENCY COURT OF APPEALS

[Title omitted]

ANSWER TO MOTION OF ADMINISTRATOR TO DISMISS COMPLAINT—Filed December 29, 1945

Now come Complainants, Jack Parker, et al., by their duly authorized attorney, Alexander Pfeiffer, of Pfeiffer & Crames, and for their answer, pursuant to Rule 14 (b) of the Rules of this Court, to the motion of Chester Bowles, Administrator of the Office of Price Administration, to dismiss their complaint, pursuant to Rule 13, allege that they have the right to appeal to this Court, pursuant to Section 203 (a) and Section 204 (a) (Supplement IV United States Title 50, Section 924 (a)) of the Emergency Price Control Act of 1942, as amended.

The accompanying memorandum sets forth the basis of the opposition to this motion and the arguments in support thereof.

The Complainants request an oral argument of this motion to dismiss and will argue either in New York or Washington or any other place designated by this Court. [fol. 37] The points here involved have never heretofore been passed upon or decided and the Complainants are desirous of supplementing their memorandum with an oral argument particularly in view of the serious consequences to them if their complaint is dismissed.

Dated: New York, December 20, 1945.

Respectfully submitted, Alexander Pfeiffer, of the firm of Pfeiffer & Crames, Attorneys for the Complainants, 551 Fifth Avenue, New York 17, N. Y.

[fol. 38] IN THE UNITED STATES EMERGENCY COURT OF APPEALS

[Title omitted]

COMPLAINANTS' BRIEF IN OPPOSITION TO MOTION OF ADMINISTRATOR TO DISMISS COMPLAINT—Filed December 29, 1945

This motion is brought by the Price Administrator to dismiss the complaint of 25 tenants of apartments in premises known as 55 Central Park West, Manhattan, City of New York, who are appealing from orders of the Price Administrator issuing certificates relating to their eviction from their homes, based upon Section 6 (b) (2) of the New York City Rent Regulations for Housing, in favor of certain purchasers under an alleged cooperative ownership plan of the apartments occupied by the complainants, and the order of dismissal by the Price Administrator of the complainants' protest thereto.

The Administrator's motion proceeds upon the ground that the complainants, as tenants, are not subject to the orders of the Price Administrator issuing certificates relating to their eviction and dismissing their protests thereto and, therefore, have no right to appeal therefrom.

[fol. 39] Statement of Facts

The facts here set forth are to be found in the complaint in this court and the record of the proceedings before the Chief Branch Attorney of the New York City Defense Rental Area, and the opinions and orders of the Area Rent Director for the same area, the Acting Regional Administrator for the OPA Region II and the Price Administrator.

All paragraph numbers refer to the complaint herein.

The complainants are tenants of certain apartments located at 55 Central Park West, City of New York. Each of the complainants has spent large sums of money in decorating his respective apartment and each of them is ready, willing and able to pay the rent required to be paid for said apartment, and to comply with any and all rules and regulations of the City, State and Federal Governments having application thereto and to do whatever may be necessary and requisite to be permitted to remain in and occupy the same as his home and place of abode (par. 9).

On June 14, 1945 David Gordon and 24 other purchasers of stock in the Fifty-Five Corporation filed petitions for

certificates of eviction pursuant to Section 6 (b) (2) of the Rent Regulation of Housing in the New York City Defense Rental Area [1] authorizing them to proceed under local law [fol. 40] to evict the complainants herein from their apartments in the said premises. These 25 petitioners are alleged purchasers and holders of proprietary leases in and of the apartments occupied by the complainants under a cooperative ownership plan sponsored by Messrs. Earle and Carver, owners of the entire capital stock of the said Fifty-Five Corporation (par. 5).

Notwithstanding the tremendous shortage of apartments in the City of New York and the great emergency that has existed in the City of New York, and in fact, throughout the country, resulting in the passing of the Emergency Price Control Act in 1942, and the creation of the Office of Price Administration, Messrs. Earle and Carver sought to convert

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[1] Section 6 (b) (2) provides:

Occupancy by purchaser. A certificate shall be issued authorizing the pursuit of local remedies to remove or evict a tenant of the vendor, for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after November 1, 1943, only as provided in this paragraph (b) (2).

(i) Where the Administrator finds that the payment or payments of principal made by the purchaser aggregate twenty per cent or more of the purchase price, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law. Except as hereinafter provided, the certificate shall authorize pursuit of local remedies at the expiration of three months after the date of filing of the petition.

* * * * * * *

Any payments of principal made from funds borrowed for the purpose of making such payments shall be excluded in determining whether twenty per cent of the purchase price has been paid, unless the Administrator finds that the loan is made in good faith and not for the purpose of circumventing or evading the provisions of this paragraph (b) (2).

about 28 apartments into cooperatives by offering for sale shares of stock of said owning corporation which they held, to purchasers, including the purchasers herein, with proprietary leases, for a term of years, of the apartments involved. The purchase price for said apartments under said share ownership plan aggregated about $390,000 over and above the first mortgage of $1,500,000 (par. 11). The occupants of these apartments, including the complainants, refused to purchase their apartments at such an exorbitant price, by acquiring stock in the owning corporation, in face of the fact that Mr. Earle himself had sworn as recently as March of this year, in an attempt to reduce the tax assessed value of the property, that its value was no more than $1,000,000 (par. 11). Earle and Carver's plan had for its object a net return to them of about $381,000, which is virtually about the sum they collected from the sale of the apartments of the complainants and others, to the purchasers in connection with property in which Earle had previously sworn there was no equity (par. 11).

[fol. 41] While the cooperative was being organized and a few prospective purchasers were being contacted, Earle and Calhoun, real estate brokers, managing agents and realtors in the City of New York, acting for and in behalf of Earle and Carver and said owning corporation, wrote a letter to Maurice A. Whitebook, Chief Attorney for the New York City Defense Rental Area of the OPA on March 5, 1945, requesting an interpretation concerning the right of purchasers of cooperative apartments in 55 Central Park West, to obtain certificates of eviction under the provisions of Subdivision II of Section 6 (b) (3) of the Rent Regulations of the OPA, set forth in the complaint in this action (par. 12). Subdivision II of Section 6 (b) (3) provided that where the cooperative was organized on or after February 17, 1945, the effective date of this Regulation, no certificate of eviction shall be issued unless on such date stock in the cooperative had been purchased by persons who were then tenants of at least 80% of the apartments in the premises or unless on such date the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to issue such a certificate.

Earle and Carver knowing that purchasers under their plan would not qualify under this provision, proceeded on the theory that substantial hardship would result to the

owners of the capital stock of the corporation if they were not permitted to proceed with the conversion of some of the apartments into cooperatives under the Regulations existing prior to February 17, 1945. To their letter there were attached certain affidavits and exhibits (par. 12). The facts contained in this letter, attached affidavits and exhibits were therafter found to be fraudulent by the Chief Branch Attorney of the New York City Defense Rental Area on the application of the purchasers and others for certificates relating to eviction of the complainants and others, as will be hereinafter shown. An alleged interpretation of hard-[fol. 42] ship was granted by the Office of Price Administration on March 23, 1945, permitting Earle and Carver to proceed with the share ownership plan under the regulations in existence prior to February 17, 1945, but which, as stated, had been changed on that date (par. 12). Thereafter the purchasers of the apartments involved herein applied for certificates of eviction from the Price Administrator, based on an alleged full compliance with Section 6 (b) (2) of the Rent Regulation for Housing in the City of New York (in effect prior to February 17, 1945), which requires, as stated above, that the purchasers of stock for the purpose of carrying out the cooperative ownership plan, must have paid 20% of the equity and the underlying obligation of the corporation, attributable to their apartments at the time of their stock purchase (par. 12).

The proceeding was referred to and came up before the Chief Branch Attorney of the New York City Defense Rental Area, who after taking about a thousand pages of testimony, submitted a report dated August 8, 1945, in which he found for the complainants herein on the ground, among others, that the purchasers did not fulfill the 20% payment required, as set forth in said Section 6 (b) (2) of the New York City Rent Regulation for Housing. (Pp. 4, 5, Report of Ira A. Schiller, Chief Branch Attorney.) Further, that the letter of interpretation as to hardship issued by the Administrator and interposed in the proceedings was based upon misrepresentations and fraudulent statements made by Earle and Calhoun who sought the interpretation in that they misrepresented their alleged delay in consummating "prospective deals" with "prospective buyers" until they procured the letter of interpretation and in that they further misrepresented as to tenants and others that they had claimed to have interested in the purchase of

apartments in the premises. (Pp. 7-12, Report of Ira A. Schiller, Chief Branch Attorney.) He also found that the sponsors of the plan were not prejudiced by any delay, as [fol. 43] they had strenuously argued, in issuing the interpretive letter of March 23, 1945. (Pp. 5-7, Report of Ira A. Schiller, Chief Branch Attorney.)

In recommending the denial of the applications of the purchasers, for certificates of eviction, the Chief Branch Attorney in his report (a part of the record filed with the Price Administrator), stated at page 12 as follows:

> "After a careful review of the entire record in this proceeding, I recommend that all the petitions herein be denied for the reasons that petitioners have not qualified under Section 6 (b) (2) of the Rent Regulation and that the exemption granted by the letter of interpretation was obtained by misrepresentations made to the Office of Price Administration in such substantial degree as to require a revocation thereof."

and further, at pages 12, 13:

> "The whole presentation of the share-ownership plan by the sponsors was permeated with the implication that this was a very substantial financial transaction involving important financial commitments on the part of the sponsors. The fact is that they had not a penny invested and were operating on an option in the final exercise of which they hypothecated the very shares of stock which had been sold to purchasers, after payment therefor had been made, for a loan of $40,000 from the Chase National Bank. This was done in order that the sponsors might buy three apartments, two in the name of Mr. Earle and one in the name of his son, none of which they intended to occupy; obviously, for the purpose of showing a greater number of sales than were actually consummated and to be able to assert compliance with the plan as submitted to OPA which called for the sale of no less than 30 apartments or 150 [fol. 44] rooms. No characterization of this loan is needed to present it in its true light."

These findings were confirmed by the Area Rent Director of the City of New York, by order made by him, and thereafter confirmed by the Acting Regional Administrator of

the OPA for Region II. In his opinion, the Acting Regional Administrator stated that purchasers had not complied with the provisions of Subdivision II of Section 6 (b) (3) of the Rent Regulation of the OPA, which required that certificates relating to eviction should only be issued if 80% of the tenants in occupancy at the time of the issuance of the certificates became purchasers of their apartments (p. 1, Order and Opinion of Leo F. Gentner, Acting Regional Administrator for Region II). He also denied the claim that purchasers were entitled to these certificates under the "hardship" provision of Subdivison II of Section 6 (b) (3) in accordance with the letter of interpretation of Maurice R. Whitebook, and sustained the findings of fraud and misrepresentation in the procurement of the letter of interpretation (p. 1). He concluded his opinion with the statement that "evictions of this character are inconsistent with provisions of the Emergency Price Control Act as amended" (p. 1). Subsequently the purchasers protested this order to the Price Administrator and the Chief Branch Attorney, the Area Rent Director and the Acting Regional Administrator, were reversed by him, and certificates or orders authorizing the purchasers to pursue their local remedies to evict the complainants from their apartments were issued (par. 6).

Complainants thereupon filed a notice of protest with the Administrator based upon the following grounds as set forth in the complaint herein at paragraph 17:

> (a) That the purchasers failed to comply with Section 6 (b) (2) of the Rent Regulation, and in each individual case paid in cash less than the proportionate [fol. 45] share of the 20% of the stock purchase price required to be paid in good faith under the Section aforementioned.
>
> (b) That Messrs. Earle and Carver, sponsors of the plan for a cooperative, and their agents Earle & Calhoun, were not prejudiced by any delay in the issuing of the interpretive letter of March 23, 1945.
>
> (c) That said letter of interpretation of March 23, 1945, was unjustified, uncalled for, unwarranted and was secured without basis in fact or in law, or in the Regulations of the OPA.

(d) The facts and documents submitted by Earle and Carver to the OPA seeking a letter of interpretation as to hardship, contained certain material misrepresentations and was a fraud upon the Administrator.

(e) That the owning corporation is not a cooperative corporation or association as defined by the Cooperative Corporation Laws of the State of New York and therefore does not come within the provisions of the laws and regulations of the Office of Price Administration as to eviction of tenants of cooperative apartments of a building owned by a cooperative corporation or association.

(f) The sponsers of the plan acted in bad faith throughout the proceedings involved herein, in that they knew that the property owned by the owning corporation had no equity over and above its underlying encumbrances and were motivated solely by the desire to obtain a profit of about $390,000 on the shares of stock of said corporation sought to be sold were worthless,—there was no equity in the property, and the plan for the sale of said shares of stock upon the [fol. 46] price aforementioned was fraudulent and based upon bad faith and misrepresentation.

(g) That the entire course of conduct of the Administrator and his subordinates in issuing the letter of interpretation and the certificates of eviction, was without justification, warrant, authority, or basis in law or in fact.

Pending the decision of the Price Administrator upon the complainants' protest, the purchasers commenced summary proceedings in the Municipal Court, Borough of Manhattan, City of New York, to evict the complainants from their homes which proceedings are now pending in that Court.

Opinion of the Price Administrator Dismissing Complainants' Protest

Complainants' protest, filed with the Price Administrator, was dismissed by him on November 2, 1945, on the ground that the complainants had no standing to protest since Section 203 (a) (50 U. S. C. A. Sec. 923 (a)) of the

Emergency Price Control Act of 1942, as amended, provides that only persons "subject to" a regulation or order may file a protest thereto with the Administrator and that since the rent regulations issued by the Administrator or his representatives prohibit or require action only by landlords, only such persons, and not tenants, are subject to the regulations and orders within the meaning of the Act, and further, that his Revised Procedural Regulation No. 3, allegedly issued pursuant to authority granted in the Emergency Price Control Act makes no provision for the filing of a protest by a tenant and that, therefore, the protest filed by the complainats did not conform to the requirements of said regulation within the meaning of Section 1300.220 of said regulation.

[fol. 47] The appeal from the said dismissal of the complainants' protest and also from the order of the Price Administrator authorizing the purchasers to pursue their local remedies to evict the complainants herein from their apartments was perfected by the filing of the complaint herein in this Court on November 19, 1945. The Price Administrator moved to dismiss this appeal December 3, 1945.

Summary of Argument

(1) The complainants, tenants herein, in the sense of Section 203 (a) and 204 (a) of the Emergency Price Control Act of 1942 are "subject to" the order of the Price Administrator authorizing the purchasers to pursue their local remedies to evict the complainants from their homes and are "aggrieved by" the order of the Price Administrator dismissing their protest thereto, in that the enforcement of the Administrator's order by means of summary proceedings in the Municipal Court of the City of New York to evict the complainants herein would require action on their part in defending themselves against such proceedings so authorized, and if defeated, in removing themselves and their families from their homes. (2) Complainants contend that Section 1300.216 of Revised Procedural Regulation No. 3 does not prohibit the filing of a protest to an order of the Price Administrator or the bringing of an appeal from the dismissal of said protest. (3) A construction of Section 1300.216 of the Revised Procedural Regulation No. 3 restricting the right to protest an order of the Price Administrator and to appeal to the Emergency Court of Appeals from the dismissal of said protest by the Adminis-

trator, to landlords only, contravenes the letter and spirit of Section 203 (a) and Section 204 (a) of the Emergency Price Control Act of 1942, as defined by its legislative history and is a violation of the Fifth Amendment of the Constittuion in depriving the complainants of their property without due process of law.

[fol. 48] Argument

Point I

The complainants had standing to protest to the Administrator and now have the right to appeal to this Court pursuant to Sections 203 (a) and 204 (a) of the Emergency Price Control Act of 1942 because they are "subject to" the order of the Price Administrator issuing certificates relating to their eviction and are "aggrieved by" the dismissal of their protest by the Price Administrator in the sense that the enforcement of the authority given to the purchasers to seek their remedies at local law to evict the complainants herein would require action on their part in defending themselves against eviction, and if defeated, in removing themselves from their homes.

Section 203 (a) of the Emergency Price Control Act of 1942 (50 U. S. C. A. Appendix Sec. 923 a) provides in part as follows:

> "At any time after the issuance of any regulation or order under Section 2 * * * any person subject to any provision of such regulation, order or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections."

It thus appears that any person at all, whether the landlord or tenant who is "subject to" an order of the Price Administrator, may protest from said order to the Administrator. The words "subject to" and any provision of such regulation, order or price schedule have received definition in various regulations of the Price Administrator and have been interpreted to encompass all [fol. 49] those on whose part action is either prohibited or required. The order of the Price Administrator dated September 28, 1945, authorized the holders of proprietary

leases of the apartments of the complainants under the so-called cooperative ownership plan, as "landlords", to seek their remedies at local law to evict the complainants herein from their homes at a time when an acute housing shortage and an emergency existed, and still exists, in the City of New York and elsewhere. The Price Administrator claims that since this order was directed to the "landlords" only and required only them to take action by bringing proceedings in the Municipal Court of the City of New York to evict the complainants, they, as tenants, were not "subject to" the order. This interpretation of the words, "subject to" is both artificial and specious; for the direct result of the institution of summary proceedings by the purchasers in the Municipal Court against the complainants would be a final order causing the complainants to remove themselves from their homes. A most arduous and unhappy type of physical action would certainly be required to be taken by them, since the complainants have no defense to the summary proceedings which could properly be asserted in the Municipal Court; for by Section 204 (d) of the Emergency Price Control Act of 1942[2],

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[2] Section 204 (d) of the Emergency Price Control Act [50 U. S. C. A. Appendix 924 (d)] provides in part:

> "The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2 (section 902 of this appendix), of any price schedule effective in accordance with the provisions of section 206 (section 926 of this Appendix), and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order or price schedule, or to stay, restrain, enjoin or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule or to restrain or enjoin the enforcement of any such provision."

[fol. 50] said Court has no jurisdiction to consider the validity of an order of the Price Administrator. The issues of fraud in the procurement of the letter of interpretation of hardship, which formed the basis for the issuance of the said certificates relating to eviction, cannot be attacked collaterally in the Municipal Court. Nor can the question whether the purchasers had complied with the prerequisites of Section 6 (b) (2) of the New York City Regulations for Housing be properly decided in the Municipal Court. Similarly, the question whether the cooperative ownership plan sponsored by Messrs. Earle and Carver was a true cooperative, as defined by Section 85 of the New York Cooperative Corporation Law and thereby entitled participants in the plan to proceed under subdivision II of Section 6 (b) (3) of the New York City Rent Regulation for Housing to obtain certificates of eviction of the complainants herein, be decided in summary proceedings in the Municipal Court of the City of New York. Under Section 204 (d) of the Emergency Price Control Act the Emergency Court of Appeals has exclusive jurisdiction to test the propriety of the order of the Price Administrator issuing the certificates of eviction and the subquent dismissal of the complainants' protest thereto.

In view of the fact that the complainants could not properly assert any defense to the summary proceedings in the Municipal Court of the City of New York, it follows that the direct result of the order of the Price Administrator authorizing the purchasers to seek their local remedies to evict the complainants herein is to cause the physical expulsion of the complainants herein from their homes. In a very real sense, therefore, the complainants are "subject to" the order of the Price Administrator.

Section 204 (a) (50 U. S. C. A. Appendix Sec. 924 (a)) of the Emergency Price Control Act provides that:

> "Any person who is aggrieved by the denial or partial denial of his protest may within 30 days after such [fol. 51] denial, file a complaint with the Emergency Court of Appeals created pursuant to Sub-Section C specifying his objections and praying that the regulation, order or price schedule protested be enjoined or set aside in whole or in part for the reasons set forth above."

The complainants were "aggrieved by" the dismissal by the Price Administrator of their protest to his order issuing the certificates of eviction for this dismissal gave a green light to the purchasers to carry through the summary proceedings for the eviction of the complainants herein. As stated above, complainants have no defense to these proceedings and necessarily, therefore, they will result in a final order causing the eviction of the complainants from their homes should it be held by this Court that dismissal of complainants' protest by the Price Administrator was proper and valid. To argue that the Price Administrator's order affected the landlord-purchasers only, is to completely lose sight of the direct consequence of the issuance of such an order.

In an attempt to support his argument, the Price Administrator cites the case of *Buka Coal Company* v. *Brown*, 133 Fed. 2d 949 at page 4 of their brief as an analogous situation in which the complainant therein was not subject to the regulations, orders or price schedules of the Price Administrator. A glance at the facts of that case, however, shows conclusively that the situation therein was not, in any way, analogous to the one at bar. There a retailer of bituminous coal took exception to the Bituminous Coal Division's minimum prices as set forth in certain river rule differentials applicable to it. In Maximum Price Regulation 120, the Price Administrator first established general maximum mine prices which, standing alone, would have cured *Buka's* trouble. However, the Administrator went on to provide in the said regulation that whenever the maximum prices, as fixed, were less than the Coal Di- [fol. 52] vision's minimum price, the maximum price should be raised to the latter level. The complainant then protested Regulation 120 to the Price Administrator, which was dismissed by him, and appealed to this Court from the said dismissal. This Court, speaking through Mr. Justice Magruder, very properly dismissed the complaint on these facts for the reason that since complainant therein was seeking lower prices rather than higher prices, it was not "subject to" the Maximum Price Regulation 120 in the sense that this provision "prohibited or required action by it." *Buka's* hardship, if any, was caused by the Bituminous Coal Division's river rules establishing minimum prices and not by the Price Administrator's Maximum Price Regulation. As a matter of fact, complainant

there was quite content to accede to that part of the Maximum Price Regulation 120 which forbade his paying more than the maximum prices.

This Court stated in the *Buka* case, that which is authority for the complainants rather than for the Price Administrator upon this motion. The Court said at page 952:

> "If we assume that the effect of Section 1340.209 of Maximum Price Regulation No. 120, here protested against, is to establish maximum prices equivalent to the Coal Division's applicable minimum prices in the situation above set forth, then in one sense complainant is 'subject to' the provision because complainant is prohibited by the regulation from paying more than the maximum price so fixed."

Clearly if *Buka Coal Company* were "subject to" Maximum Price Regulation 120 in the sense that it was prohibited from paying more than the maximum price fixed therein, the complainants in the case at bar are "subject to" the order of the Price Administrator authorizing the purchasers to pursue their remedies at local law to evict the complainants herein who have no defense to such proceedings. The learned Judge continued, at page 952:

> [fol. 53] "But complainant is not objecting because it wants to pay higher prices in the maximum fixed; what it is seeking is lower prices. Insofar as complainant is unable to buy its coal for less than the Administrator's maximum price, this is due, not to any prohibition in the Maximum Price Regulation but to the bituminous Coal Division's river rules establishing minimum prices. Complainant is not entitled to protest the regulation in the respects in which the regulation does not prohibit or require action by it merely because the regulation also forbids the payment of more than maximum prices, an amount which complainant no doubt gratefully receives."

It thus appears that the *Buka* case is clearly distinguishable from the case at bar in two respects: (1) In the case at bar the direct result of a final order evicting complainants from their homes by the Municipal Court, acting upon authority contained in the Administrator's order issuing

certificates of eviction and permitting the purchasers to pursue their remedies at local law, would be to require action on the part of complainants in defending themselves against such proceeding if they had a defense and in removing from their homes, with their families and in many cases with small children, if final order is entered against them, at a time when an acute housing emergency exists and when there are no other apartments to be had in the City of New York and its environs. For that reason alone, complainants are "subject to" the order of the Administrator. Certainly, they are "aggrieved by" the denial of their Protest.

(2) In the *Buka* case, the complainant was not a party to any proceedings which set the maximum price of coal, whereas in the instant case, complainants appeared and were successful at the hearing before the Chief Branch Attorney of the New York Defense Rental Area, whose findings and recommendations were confirmed by the Area [fol. 54] Rent Director and the Regional Administrator of the OPA for Region II, before being reversed by the Price Administrator in Washington, without a hearing. Certainly, the complainants who were "parties" to these proceedings and were successful in three instances, have the right to appeal to the Court which has exclusive jurisdiction to consider the validity of order of the Price Administrator.

In *Yakus* v. *United States*, 321 U. S. 414, the Supreme Court, speaking through Chief Justice Stone, liberally construed the provisions of the Emergency Price Control Act for judicial review of the Administrator as follows at page 433:

> "In addition, the present Act seeks further to avoid that confusion by restricting judicial review of the Administrator's determination to a single court. Such a procedure, so long as it affords *to those affected* a reasonable opportunity to be heard and present evidence does not offend against due process. *Bradley* v. *Richmond*, 227 U. S. 477; *First National Bank* v. *Weld County*, 264 U. S. 450; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337." (Italics ours.)

The use of the expression, "those affected", by the Chief Justice shows clearly the intent of the Court to construe

the judicial review provisions of the Emergency Price Control Act as all inclusive rather than restricted to a particular class of persons. In defining the power of the Emergency Court of Appeals to review actions of the Administrator, Mr. Justice Stone continued at page 437:

> "The Emergency Court has power to review all questions of law including the question where the Administrator's determination is supported by evidence, and any question of the denial of due process for any pro- [fol. 55] cedural error appropriately raised in the course of the proceedings."

It therefore appears that although Congress was impelled by the pressure of the emergency situation then existing to authorize summary action on the part of the Price Administrator, the Supreme Court in construing this Act made it quite clear that the action of the Administrator would always be subject to later judicial review. (*Yakus v. United States* (1943), 321 U. S. 414, 442.)

Point II

Section 1300.216 of Revised Procedural Regulation No. 3 does not restrict the right to protest from an order of the Price Administrator to landlords only as argued by the Price Administrator.

In his brief at pages 4, 5 and 6, the Price Administrator argues that Section 1300.216 of Revised Procedural Regulation No. 3 restricts the right to protest an order of the Price Administrator only to landlords who are subject to the orders or regulations of the Administrator in the sense that action on their part is prohibited or required by said order or regulation.

Section 1300.216 provides as follows:

> "Section 1300.216 Right to protest. Any landlord subject to any provision of a maximum rent regulation, or of an order issued under Section 1300.210 of this regulation, or of an order entered under section 5 (d) of any maximum rent regulation, or of an order entered by the rent director under Section 1300.207 of this regulation, may file a protest in the manner set forth below. A landlord is, for the purposes of this regulation, subject to a provision of a maximum rent

[fol. 56] regulation or of an order only if such provision prohibits or requires action by him. Any protest filed by a landlord not subject to the provision protested, or otherwise not in accordance with the requirements of this regulation, may be dismissed by the Administrator."

A careful reading of this section and its appropriate cross references indicates that the right to protest is restricted only to landlords subject to a provision of a maximum rent regulation or an order entered by a regional administrator or an order entered by a rent director. Nowhere in this section is there any provision affecting the right of either a landlord or a tenant to protest to *an order of the Price Administrator*. *A fortiori*, there is no provision in this section affecting the right of a landlord or a tenant to appeal to the Emergency Court of Appeals from the dismissal of its protest by the Price Administrator to an order issued by him.

In the case at bar, the complainants were not protesting from an order made by the Area Rent Director or the Regional Rent Administrator for the simple reason that the orders issued by these officials were in their favor and denied the application of the purchasers for certificates of eviction of the complainants. Rather, it was the purchasers who protested to the Price Administrator from the denial of their applications for certificates of eviction by the Chief Branch Attorney, the Area Rent Director of the New York City Defense Rental Area and the Regional Administrator of the OPA for Region II. The tenants' protest to the Price Administrator related to the order issued by him granting the landlord's protest and authorizing them to pursue their local remedies to evict the complainants. This appeal to the Emergency Court of Appeals is taken from the order issued by the Price Administrator dismissing said protest and from the order of the Price Administrator issuing the certificates of eviction. It is patent, therefore, that there [fol. 57] is nothing in Section 1300.216 or any other section of Revised Precedural Regulation No. 3 which restricts the right of appeal of tenants, such as the complainants herein, under the facts of the case at bar. We must, therefore, look to the provisions of the Emergency Price Control Act of 1942, as amended, in order to determine whether the complainants have standing to appeal to this Court. These

provisions, Section 203 (a) and Section 204 (a) (50 U. S. C. A. Appendix Sec. 923 (a) and 924 (a)), as set forth in Point I, *supra*, clearly support the proposition that the complainants herein are "subject to" the order of Price Administrator authorizing the purchasers to commence proceedings to evict the complainants and were "aggrieved by" the dismissal of their protest to the Administrator from said order, and as such had standing to protest to the Price Administrator from his order issuing the said certificates of eviction and to appeal to this Court from the dismissal thereof.

Point III

The Price Administrator's interpretation of Section 1300.216 of the Revised Procedural Regulation No. 3 denying the right of the complainants herein as tenants to protest the unreasonableness of his order issuing certificates relating to their eviction and to appeal from the subsequent dismissal by him of said protest is in direct contravention to the letter and spirit of the Emergency Price Control Act as defined by its legislative history and violates the Fifth Amendment of the Constitution by depriving complainants of their property rights in their apartments without due process of law.

The legislative history of the Emergency Price Control Act of 1942, as amended, shows the clear intent of Congress to permit any one affected by an order of the Price Administrator to appeal therefrom to the Emergency Court of [fol. 58] Appeals. Thus, the declaration of purposes, as set forth in the report of the Committee of Conference on the disagreeing votes of the two houses of Congress, on the amendment of the Senate to House of Representatives Bill No. 5990, which was the proposed Emergency Price Control Act as reported in Volume 88 of the Congressional Record at page 661, January 26, 1942 (four days before the effective date of the Act) stated one of the policies of the Act to be:

> "(11) the protection of the interests of those subject to the Act by providing procedures for administration and review."

The Record defined this policy at page 663 as follows:

> "ADMINISTRATION AND REVIEW. Both the House bill and the Senate amendment vested the administration of the bill in a single Price Administrator. * * * the Senate amendment provided (2) * * * direct judicial review of regulations and orders of the Administrator by an Emergency Court of Appeals composed of federal judges designated for service at such court by the Chief Justice of the United States."

The Record continues as follows, pages 663, 664:

> "The Senate amendment also provided that a statement of considerations must accompany every regulation or order establishing a maximum price, *that every such regulation or order should be subject to protest proceedings*, that if any protest should be denied the Administrator must advise the protestant of the grounds upon which such denial was based * * *"

The Conference agreement adopted the provisions of the Senate amendment (Volume 88 Congressional Record p. 664).

[fol. 59] Congressman Henry B. Steagall, speaking in behalf of the Conference Report stated at pages 664, 665, Volume 88 Congressional Record:

> "Another provision that has been controversial throughout the entire consideration of the bill hinges on the question of the authority to be established for the administration of the law. The House bill provided for the administration of the law by a single Administrator whose office was created by the bill. There was included in the House bill, as reported by the Committee on Banking and Currency, a provision establishing a special Appellate Court of not less than three circuit or district court judges, named by the Chief Justice of the United States, with the right to add additional members whenever required, the Court to be permitted to sit in divisions when necessary. *The provision also gave anybody dissatisfied with an order, ceiling or regulation of the Administrator the right to appear and protest the action of the Administrator.* The Administrator was required to take action

on such protest within 30 days. Thirty days would be required in which an appeal might be made to the Emergency Court of Appeals established under the bill, with the duty of the Court to review the decision of the Administrator in establishing ceilings or other regulations under the bill.

"The Conference Report follows substantially the bill reported by the House Committee on Banking and Currency. That is the plan embodied in the Conference Report." (Italics ours.)

During the course of the debate in the House on the Conference Report, Congressman William T. Pheiffer of New York (no relation to the attorney for the complainants), speaking in behalf of the Report, stated at page 687:

"* * * under the provisions of the Conference report, when the Price Administrator after all this [fol. 60] investigation which he makes fixes a price, *anyone who is aggrieved by reason of that decision has the right to enter a protest. He may file a protest and within 30 days he has a right to have a decision upon his protest. If that is denied, then he has the right to appeal to a court,* not an administrative board but an independent court set up and established under the provisions of the Conference report, the members of which court are appointed, if you please, by the Chief Justice of the United States Supreme Court. That court has the right and it is its duty to review the proceedings under which the price ceiling was fixed by the Administrator. If the Administrator does not follow the law which this Congress lays down, he is reversed and may I say that we are determining that policy. It is a legislative policy. * * * The Congress lays down the standards and establishes the procedure and tells and directs the Administrator what he shall do." (Italics ours.)

A motion to recommit the Conference Report to the Committee of Conference was defeated (Volume 88 Congressional Record p. 688) and the Conference Report was confirmed by the House page 688 and by the Senate page 725. No extensive discussion concerning the Administration and Review provisions of the Conference Report appeared in the report of the debate thereon in the Senate.

It is evident from the statement of purposes of the Act as to Administration and Review in the Conference Report and the debate thereon, that Congress had in mind a careful check upon the powers of the Administrator under the Act by this very Court. Nowhere does there appear the slightest suggestion of any technicalities such as contained in Revised Procedural Regulation No. 3 which might be construed as restricting the right to protest an order of the Price Administrator and to review the dismissal of said protest in the Emergency Court of Appeals only to a particular class of persons such as landlords. A reading [fol. 61] of the entire record of the debates in both the House and Senate must convince one that although Congress wished to make effective price controls during the Emergency, it still intended that persons who would be affected by orders of the Administrator would be able to review the same in a higher forum.

In the case at bar, we have a situation where the complainants were parties to extensive hearings, including about one thousand pages of testimony of witnesses on both sides and cross examination by opposing counsel, before the Chief Branch Attorney of the New York City Defense Rental Area on the application of the purchasers for certificates of eviction. Detailed findings of fact, conclusions of law and recommendations were made by him to the Area Rent Director who subsequently confirmed the report denying the application of the purchasers for certificates of eviction on the ground that they had not complied with the statutory prerequisites of Section 6 (b) (2) of the New York City Regulation for Housing and in that they had made fraudulent statements in the letter of their representative requesting a letter of interpretation concerning hardship which became the basis for the issuance of the certificates of eviction of these complainants in the order of the Price Administrator dated September 28, 1945. Thereafter, this report was confirmed by Leo F. Gentner, Acting Regional Administrator of the OPA for Region II, and the purchasers protested this decision to the Price Administrator who summarily reversed the three previous officials without a hearing of any kind.

Can it be said that this action of the Price Administrator, which was challenged first in the protest to the Price Administrator and reiterated in the complaint on this appeal as "unfair, unreasonable, arbitrary, unequitable and

capricious and not in accordance with the law" (paragraph 16 (h)) ends the litigation? Can the Price Administrator reverse the report and findings of the Chief Branch Attorney, the Area Rent Director and the Regional Administra-
[fol. 62] tor, wtihout a hearing and wtihout subjecting his decision to review by a court of law? Such a holding would place the Price Administrator in the position of unchallenged power to cause unjustly the eviction of tenants all over the land at a time when an acute housing shortage prevails throughout the country without allowing these displaced persons to appeal from any unwarranted exercise of his authority.

In still another respect, a denial of a tenant's right to appeal from an order of the Price Administrator issuing certificates relating to such tenant's eviction would make a mockery of the declared purposes of the Emergency Price Control Act. Section 201 (a) of this Act (50 U. S. C. A. Appendix Sec. 901 (a)) provides:

> "It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and prevent speculative, unwarranted and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disrupting practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; * * *"

Apparently with this statement of the policy of the Act in mind Robert S. Fougner, Regional Rent Attorney for the OPA of the New York Area, warned the members of the Bar Association of the State of New York in a speech reported in the "New York World Telegram", page 32 on May 2, 1945, that owners of apartment buildings were demanding excessive rentals on midtown properties under the guise of selling living quarters as cooperative apartments. Mr. Fougner was reported in the newspaper as saying:—

> "That preliminary reports reaching my office indicate that in many instances real estate operators are not submitting renewal leases to tenants. Instead, [fol. 63] they are attempting to persuade the occupant

to purchase the apartment as part of a cooperative venture. The arguments advanced by the real estate operators in supporting the purchase of the apartment are based on (1) the tax saving provided by both Federal and New York State income tax laws and (2) to obtain security in the postwar era when operators anticipate a continued tight housing situation even if OPA controls are relinquished.

"The development of a cooperative corporation with the resultant eviction of tenants creates a far more disruptive practice than is involved in the sale of an ordinary one or two family house.

"It is not the purpose nor the right of the Rent Administrator to prevent a tenant from becoming an owner of his apartment—if that is the tenant's bona fide intention."

Mr. Fougner concluded his address with an assertion which must seem ironic when read in the light of the facts of the instant case.

"But it is the right and duty of the Administrator to prevent mass eviction of apartment house tenants or the forced sale of accommodations to their present tenants as an alternative to eviction.

"The Administrator will use all legal means at his disposal to stop this practice which has gained rapid headway within the past few weeks."

As we have alleged in the complaint, the sole purpose of the so-called plan for the cooperative ownership of the apartments in 55 Central Park West, New York City, was to net to the sponsors thereof a return of $381,000.00 through the sale of these apartments in a building in which there was no equity, at a time when the acute housing shortage in the City of New York made it possible for these sponsors to extort exorbitant prices for the apartments. [fol. 64] The points raised by the complainants in opposition to the issuance of certificates of eviction, sustained as they were by the Chief Branch Attorney, the Area Rent Director and the Acting Regional Administrator, all set forth in their protest to the Price Administrator, and in their complaint filed herein (par. 17) if sustained by this Court will necessarily nullify the effect of the order of the Administrator permitting the commencement of the dispos-

sess proceedings against the complainants in the local courts.

All of these points, we submit, have merit and should be given consideration upon a review of the Administrator's orders, now pending in this Court.

The reversal by the Price Administrator of the recommendations of the Chief Branch Attorney, as confirmed by the Area Rent Director and subsequently by the Acting Regional Administrator of the OPA for Region II contravenes the spirit of the Emergency Price Control Act of 1942, as elucidated in the debates in Congress as well as the statement of the policy of the OPA by Mr. Fougner above quoted.

Any construction of Section 1300.216 of the Revised Procedural Regulation No. 3 which would prohibit an appeal by tenants, such as the complainants herein, is not only unjust and opposed to the public policy enunciated in the Act but is also null and void for it is well settled that any regulation which is inconsistent with the statute it proposes to explain is a mere nullity.

In *Manhattan General Equipment Co.* v. *Commissioner of Internal Revenue* (1935), 297 U. S. 129, Mr. Justice Sutherland of the United States Supreme Court, said at page 134:

> "The power of an administrative officer or board to administer a Federal statute and to prescribe rules and regulations to that end is not the power to make a law, for no such power can be delegated by Congress, but the power to adopt regulations to carry into effect [fol. 65] the will of Congress as expressed by the Statute. A regulation which does not do this, but operates to create a rule out of harmony with the Statute, is a mere nullity. *Lynch* v. *Tilden Produce Co.*, 265 U. S. 315, 320, 322, 44 Sup. Ct. Rep. 488; *Miller* v. *United States*, 294 U. S. 435, 439, 440, 55 Sup. Ct. 440, and cases cited. And not only must the regulation, in order to be valid, be consistent with the statute, but it must be reasonable. *International R. Co.* v. *Davidson*, 257 U. S. 506, 514, 42 Sup. Ct. 179; . . . ."

The Court continued as follows at page 135:

> "The statute defines the rights of the taxpayer and fixes a standard by which such rights are to be measured. *The regulation constitutes only a step in the administrative process. It does not, and could not, alter the statute.* It is no more retroactive in its operation than a judicial determination construing and applying a statute to a case in hand." (Italics ours.)

The same thought was cogently expressed by Judge Goddard of the United States District Court, Southern District of New York, in *Saks* v. *Higgins* (1939), 29 Fed. Supp. 996. He said at page 999:

> "* * * the interpretation of a statute always remains the function of the judiciary. The regulation cannot change what the Act originally meant."

Moreover, any regulation which could be utilized to cause the eviction of tenants without according to them the right of judicial review of the propriety and reasonableness of the order of an administrative official, such as the Price Administrator, would violate the provisions of the Fifth Amendment which forbids the taking of property of a citizen of the United States wtihout due process of law.

In *Bowles* v. *Willingham* (1943), 321 U. S. 503, the constitutionality of the Emergency Price Control Act was [fol. 66] challenged on the ground that no hearings were permitted to landlords before the effectuation of maximum rent orders. In upholding the reasonableness of this procedure, the Court said, through Mr. Justice Douglas, at page 521:

> "To require hearings for thousands of landlords before any rent control order could be made effective might have defeated the program of price control * * *. *But where Congress has provided for judicial review after the regulations or orders have been made effective, it has done all that due process under the War emergency requires.*" (Italics ours.)

Conversely, however, if Section 1300.216 is construed to restrict the right of appeal from an order of a Price Ad-

ministrator to a landlord only, then a tenant, who is deprived of his right to continue in possession of his apartment by an order of the Price Administrator which was procured by fraud and contrary to the express provisions of regulations promulgated by the Administrator and said tenant is further prohibited from testing the propriety of such an order by appeal to the only court which has jurisdiction to consider the validity of said order, then said tenant is thereby deprived of his property without due process of law contrary to the provisions of the Fifth Amendment of the Constitution.

Conclusion

The complainants herein have standing to invoke the appellate jurisdiction of this Court because they are "subject to" the order of the Price Administrator issuing certificates relating to their eviction in the sense that as a direct result of said order they would be required to defend the proceedings when instituted and in the absence of a defense or if defeated, to remove themselves from their homes at a time when an acute housing shortage existed, and still exists, in the City of New York. For the same reasons com- [fol. 67] plainants were "aggrieved by" the dismissal of their protest to the Price Administrator from the issuance of said certificates of eviction. Section 1300.216 of Revised Procedural Regulation No. 3 does not prohibit the complainants, as tenants, from appealing to this Court because the complainants were not protesting from an order of the Regional Administrator or the Area Rent Director or a maximum rent regulation as encompassed by this section but rather were protesting to the Price Administrator from an order made by him and, therefore, come under the provisions of Section 203 (a) and Section 204 (a) of the Emergency Price Control Act of 1942 which grants to anyone "subject to" or "aggrieved by" an order of the Price Administrator the right to protest to the Price Administrator and to judicial review of the dismissal of said protest, in the Emergency Court of Appeals. Any construction of Section 1300.216 of the Revised Procedural Regulation No. 3 which denies to the complainants, as tenants, the right to appeal to the Emergency Court of Appeals contravenes the letter and spirit of the Emergency Price Control Act

of 1942 and violates the Fifth Amendment in depriving the complainants of their property rights in and to their apartments without due process of law.

For the reasons here assigned the motion to dismiss complainants' complaint should be denied.

Respectfully submitted, Alexander Pfeiffer of the firm of Pfeiffer & Crames, Attorneys for Complainants, 551—5th Avenue, New York 17, N. Y.

Alexander Pfeiffer, Paul N. Pfeiffer, of Counsel.

[fol. 72] [Stamp:] United States Emergency Court of Apeals. Filed Jan. 4, 1946. Herman C. Beasley, Clerk

IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, et al.,

v.

CHESTER BOWLES, Price Administrator

Now come Jack Parker, et al., by their duly authorized attorney, Alexander Pfeiffer, of Pfeiffer & Crames, and move for leave to orally argue the motion made herein by Chester Bowles, Price Administrator, to dismiss the complainants' complaint, such argument to take place either in Washington, D. C., or New York, as the Court may direct.

The annexed affidavit sets forth the reason for this application.

Dated: New York, January 3, 1946.

Respectfully submitted, Alexander Pfeiffer, of the firm of Pfeiffer & Crames, Attorneys for the Moving Parties Herein, Office & Post Office Address, 551 Fifth Avenue, New York 17, N. Y.

[fol. 73] IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, et al.,

v.

CHESTER BOWLES, Price Administrator

STATE OF NEW YORK,
County of New York, ss:

Alexander Pfeiffer being duly sworn, says: I am the attorney for the complainants herein and make this affidavit

in support of this motion for leave to orally argue the motion made by Chester Bowles, Price Administrator, to dismiss the complainants' complaint herein.

Briefs have been submitted to this Court upon such motion by the Price Administrator in support of his motion, and by the complainants in opposition thereto. It is unnecessary therefore to recite the facts or the law having application to the question involved upon the motion to dismiss the complainants' complaint. However, the attention of the Court is called to the fact that the question involved upon the motion has never been decided either directly or indirectly, as we point out in the brief submitted in behalf of the complainants. Whether the tenants in the situation in which they were involved in the proceeding for certificates of eviction are subject to the order of the Price Administrator, and whether upon the dismissal of their protest they had the right to appeal to this Court, has never been, as I understand it, presented for determination or decided.

The case upon which the Price Administrator relies is one entirely different from the instant case and has been distinguished in our brief. In view of the importance of this motion to the complainants, I am anxious, in their behalf, to orally argue this motion so that in the course of the argument, if any questions are presented, they can be answered then and there, and so that the Court, in the determination of this question, may have not alone the benefit of the written brief but the oral argument of counsel, which is frequently most essential and important in the [fol. 74] proper disposition, particularly of an appeal.

Any time that this Court may appoint for the argument will be satisfactory to me, and the place of the argument, Washington or New York, would also be satisfactory, and if it is more convenient for the Price Administrator that the argument take place in Washington, I shall be glad to argue the motion there. I do believe, however, that the interests of the complainants would best be served by an oral argument, in addition to the briefs submitted in their behalf.

No previous application has been made for this relief, except that in the answer accompanying the brief, an oral argument was requested.

Wherefore, I respectfully request that an oral argument of the motion to dismiss the complainants' complaint be permitted.

Sworn to before me this 3rd day of January, 1946,
Rose Hoqpauir, Commissioner of Deeds, N. Y. C.,
New York Co. Clk's No. 25, Reg. No. 7-H-22.
Commission Expires March 13, 1947.

Alexander Pfeiffer.

[fol. 75] [Stamp] United States Emergency Court of Appeals. Filed Jan. 18, 1946. Herman C. Beasley, Clerk.

UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, et al.,

v.

CHESTER BOWLES, Price Administrator

ORDER

It is ordered that the Respondent's motion to dismiss the complaint in the above entitled case be assigned for hearing and determination to a division of the court consisting of Chief Judge Maris, Judge Magruder and Judge McAllister.

By the Chief Judge.

Teste: Herman C. Beasley, Clerk.

January 18, 1946.

[fol. 76] Friday, January 18, 1946.

Pursuant to adjournment and call of the Chief Judge, the Court met at 10:30 A. M., at New York, New York.

Before Honorable Albert B. Maris, Chief Judge, and Honorable Thomas F. McAllister, Associate Judge.

No. 271

JACK PARKER, et al.,

vs.

CHESTER BOWLES, Price Administrator

Argument on Respondent's motion to dismiss the complaint commenced by Mr. Jacob D. Hyman, for Respondent, continued by Mr. Alexander Pfeiffer, for Complainants, and concluded by Mr. Jacob D. Hyman, for Respondent. Mr. Louis L. Tetelman appeared and argued as amicus curiæ.

Counsel for both sides stipulated orally that Judge Magruder, who was unable to be present, might participate in the determination of the motion to dismiss the complaint.

Upon oral motion, Mr. Louis L. Tetelman was granted leave to appear and argue and file a brief on behalf of Ada M. Becker, et al., Landlords, as amici curiæ, without prejudice on the issue of intervention of Landlords as parties.

[fol. 77] [Stamp:] United States Emergency Court of Appeals. Filed Mar. 13, 1946. Herman C. Beasley, Clerk.

UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, et al.,

vs.

CHESTER BOWLES, Price Administrator

Now comes Jacob D. Hyman, Associate General Counsel of the Office of Price Administration, and respectfully suggests to the Court that Chester Bowles resigned as Price Administrator on February 26, 1946, and that Paul A. Porter has been appointed by the President, by and with the advice and consent of the Senate, as Price Administrator, in accordance with the provisions of Section 201(a) of the Emergency Price Control Act of 1942; that Paul A. Porter has duly qualified as Price Administrator by taking the oath of office on February 26, 1946, at 11:15 A. M.; and that it would be in the public interest and in accordance with Rule 28(b) of the Rules of this Court and Sec. 11 of the Act of February 13, 1925, c. 229 (43 Stat. 941), U. S. C. Title 28, Sec. 780, for this Court to order the substitution of Paul A. Porter, Price Administrator, for Chester Bowles, as Respondent in the above entitled cause.

Respectfully submitted, Jacob D. Hyman, Associate General Counsel.

Dated: March 13, 1946.

[fol. 78] [Stamp:] United States Emergency Court of Appeals. Filed Mar. 13, 1946. Herman C. Beasley, Clerk.

UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, et al.,

vs.

CHESTER BOWLES, Price Administrator

ORDER

Upon consideration of the suggestion of the resignation of Respondent, Chester Bowles, as Price Administrator,

filed herein by Jacob D. Hyman, Esquire, Associate General Counsel of the Office of Price Administration, and the Court being advised that Paul A. Porter has been appointed by the President of the United States as Price Administrator, in accordance with Section 201(a) of the Emergency Price Control Act of 1942 as amended, and has duly qualified as Price Administrator by taking the oath of office on February 26, 1946, it is

Ordered that Paul A. Porter, Price Administrator, be, and he is hereby, substituted as Respondent in the above entitled case.

By the Chief Judge.

Teste: Herman C. Beasley, Clerk.

March 13, 1946.

[fol. 74] IN UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER et al.,

v.

PAUL A. PORTER, Price Administrator

Heard at New York, January 18, 1946

Before Maris, Chief Judge, and Magruder and McAllister, Judges

Mr. Alexander Pfeiffer, for the complainants.

Mr. Jacob D. Hyman, Associate General Counsel, with whom Mr. Richard H. Field, General Counsel, of the Office of Price Administration, was on the brief, for the respondent.

Mr. Louis L. Tetelman, amicus curiae.

OPINION OF THE COURT—Filed March 13, 1946

By MARIS, Chief Judge:

The complainants are tenants of apartments in an apartment house located at 55 Central Park West, New York City, owned by the 55 Corporation. They seek to set aside orders of the Price Administrator issued under section 6 (b) (2) of the Rent Regulation for Housing in the New York City Defense-Rental Area [1] which granted to certain purchasers of stock of the 55 Corporation who had acquired with their stock proprietary leases of the apartments in question certificates authorizing them to pursue their legal remedies for the eviction of the tenants. The latter filed a joint protest against the Administrator's orders which the Administrator dismissed. The tenants thereupon filed the present complaint in this court under Section 204 (a) of the Emergency Price Control Act. The Administrator has moved to dismiss the complaint upon the ground that the complainants are without standing to file it.

Section 204 (a) provides that only a person aggrieved by the denial of his protest may file his complaint under that

[1] 8 F. R. 13914.

section. Such a complainant must therefore have had standing to file a protest under Section 203 (a). Under that section, however, only a person "subject to" a provision of a regulation or order may file a protest against it. [fol. 75] We are therefore presented with the question whether a tenant of a housing accommodation with respect to which the Administrator has ordered a certificate of eviction to be issued is a person subject to that order within the meaning of Section 203 (a).

The Administrator contends that a person is subject to a regulation or order within the meaning of Section 203 (a) only if the regulation or orders prohibits or requires action by him. In support of this contention he refers to the legislative history of the Act [2] as well as to the decision of this court in Buka Coal v. Brown, 133 F. 2d 949 (1943). He also calls attention to the fact that he has so construed this phrase in his procedural regulations from their inception.[3]

The Administrator's contention in this respect loses some of its force, however, when it is recalled that on November 2, 1942,[4] in revising Procedural Regulation No. 1 he included in Section 1300.24 (which carried forward the provisions of Section 1300.9 of the original regulation) the proviso:

> "That a producer of an agricultural commodity shall be considered to be subject to a maximum price regula-

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[2] Sen. Rep. No. 931, 77th Cong., 2d Sess. (1942), p. 22:

> "Section 203 (a) is designed to provide the advantages of a hearing, in a manner consistent with the need for expeditious determinations, to all persons who are required to obey the provisions of regulations or orders under section 2."

[3] Section 1300.9 of Procedural Regulation No. 1 issued February 12, 1942 (7 F. R. 971): "A person is, for the purposes of this Regulation, (§§ 1300.1 to 1300.56, incl.) subject to a provision of a maximum price regulation only if such provision prohibits or requires action by him."

Section 1300.215 of Revised Procedural Regulation No. 3 issued January 12, 1943 (8 F. R. 526): "A landlord is, for the purposes of this regulation, subject to a provision of a maximum rent regulation or of an order, only if such provision prohibits or requires action by him."

[4] Revised Procedural Regulation No. 1, Section 1300.24, 7 F. R. 8961.

> tion for the purpose of asserting any right created by section 3 (c) of the Emergency Price Control Act of 1942 . . . for the benefit of producers of such an agricultural commodity.

Since such regulations do not prohibit or require action by farmers this proviso clearly extends the concept of the phrase in question beyond that here contended for. Moreover in Illinois Packing Co. v. Snyder, 151 F. 2d 337 (ECA 1945), this court held that a person who contended that he was arbitrarily and capriciously discriminated against in a regulation providing for the payment of subsidies was a person subject to the regulation within the meaning of Section 203 (a). We think, therefore, that it cannot be said that the right to file a protest against a regulation or order issued under Section 2 of the Emergency Price Control Act must in all cases be restricted to the extent for which the Administrator here contends.

The question then is whether in the case before us, that of tenants of housing accommodations, it is the purpose of the Act to accord the tenants administrative and judicial review of the action of the Administrator in permitting their landlords to undertake eviction proceedings against them. We think that the answer to this question depends upon whether the orders in controversy deprived the tenants of the opportunity to enjoy a right of possession which was vested in them and which they would have been entitled [fol. 76] to enforce except for those orders. If the orders did deprive them of the opportunity to enforce and enjoy such a vested right they were subject to them within the meaning of the Act and, therefore, entitled to protest them. If, on the other hand, the tenants had no such vested right the orders deprived them of nothing to which they were entitled. Under such circumstances they could hardly be said to be subject to the orders in any real sense and would, therefore, have no standing to protest them.

The so-called certificates of eviction which the Administrator issued did not themselves authorize or require the tenants' eviction. Nor did they operate to deprive the tenants of any right to possession which they otherwise had under their leases or the laws of New York. The certificates merely removed the ban of Section 6 of the Rent Regulation for Housing against eviction and left the landlords free to employ any remedies which the leases and the local law gave

them for the recovery of possession if they could show that they were entitled to it. Consequently the only right which the certificates of eviction could possibly be said to have jeopardized was the right, if any, to possession of their apartments which the Emergency Price Control Act and the Rent Regulation for Housing conferred upon the tenants by virtue of the ban of Section 6 of the Regulation against eviction. Only if the Act and Regulation conferred such a right upon the tenants did they have standing to file their protest and the present complaint.

An examination of the Emergency Price Control Act, however, discloses that it was not one of its purposes to give to tenants any right to remain in possession of the defense-area housing accommodations which they might happen to occupy. When Congress has seen fit to make such a provision for tenants it has used apt language to express its purpose [5] but it did not do so in this case. Its sole purpose here, so far as defense-area housing accommodations are concerned, was to control the amount of rents of such accommodations and to prevent speculative, unwarranted and abnormal increases therein. The only reference in the Act to the possession of housing accommodations is contained in Section 2(d), which in this respect provides:

> "(d) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit . . . speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in . . . rent increases, . . . inconsistent with the purposes of this Act."

It will thus be seen that the power to regulate practices relating to recovery of the possession of defense area housing accommodations is given to the Administrator only incident to his power to prevent improper rent increases and

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[5] District of Columbia Rents Act of October 22, 1919, c. 80, § 109, 41 Stat. 298, 301, construed in Block v. Hirsh, 256 U. S. 135 (1921); Soldiers & Sailors Civil Relief Act of 1940, 54 Stat. 1178, 1181, 50 U. S. C. A. App. § 530.

evasive practices likely to result in such increases. Only [fol. 77] to this necessary extent is the vested right of a landlord to recover possession of his property to be restrained by the Administrator under the Act. The language of Section 6 of the Rent Regulation for Housing which bans the removal of tenants except under certain circumstances and provides for the issuance of certificates of eviction must be read in this light. If construed as extending to cases which do not involve the possibility of practices likely to result in rent increases it would lose its statutory support. Compare Taylor v. Bowles, 145 F. 2d 833 (ECA 1944).

It will, of course, be conceded that most tenants of defense-area housing accommodations do in fact enjoy a substantial measure of protection against eviction as a result of the Regulation's prohibition against eviction except under circumstances found by the Administrator not to be susceptible to manipulation tending to evade rent ceilings. But neither the Act nor the Rent Regulation for Housing gives to any tenant any vested or enforceable right of possession as against his landlord which he would not otherwise have under his lease or the local law. This becomes clear when it is considered that the ban against eviction imposed by Section 6 of the Rent Regulation finds its only justification and support in the possibility that the landlords to which it applies may otherwise use eviction proceedings in order to compel the payment of increased rents. It is not imposed and under the Act it may not be imposed because of any necessities of the tenant or his inability to secure other housing accommodations.

It follows that when the Administrator has determined, as he did here, that eviction will not be inconsistent with the purpose of the Act to prevent rent increases, no rights of the tenants have been affected so as to give them standing to protest. This is true even though, as here, the Administrator invited statements from the tenants in response to the landlord's petitions and permitted them to participate in the oral hearing of these petitions. This was doubtless wise administrative procedure which enabled the Administrator to become fully informed with respect to all the facts which might have any bearing upon the questions raised by the petitions but it did not, as the complainants urge, make the tenants parties to the proceedings. It will be seen that this must be so when it is remembered that no showing which any one of the tenants might have made with respect to his

own situation and necessities could have had the slightest bearing upon the Administrator's determination of the question raised by the landlords' petitions. That question at bottom was simply whether the landlords had shown that their proposed eviction proceedings were of a character which did not involve the possibility of increasing rents in derogation of the war effort. The tenants' interest with respect to this question was no different in character from the interest of the public generally.

What has been said disposes of the complainants' contention that the failure to accord them administrative and judicial review of the Administrator's action violates the due process clause of the Fifth Amendment. For the issuance by the Administrator of his so-called eviction certificates did not deprive the complainants of any vested right under their leases or the local law to the possession of the defense-area housing accommodations which they occupy. [fol. 78] Since, as we have seen, neither the Emergency Price Control Act nor the Rent Regulation for Housing gives them such a right, the Administrator's action cannot be said to have constituted a deprivation of their property with respect to which due process of law was required. The mere fact that they may be prevented from enjoying an incidental and fortuitous benefit under the Act does not have that effect. Compare Pennie v. Reis, 132 U. S. 464 (1899); Violet Trapping Co. v. Grace, 297 U. S. 119 (1936); Ingraham v. Hanson, 297 U. S. 378 (1936); Wright v. Central Ky. Gas Co., 297 U. S. 537 (1936); Dodge v. Board of Education, 302 U. S. 74 (1937).

A judgment will be entered dismissing the complaint.

Concurring Opinion

Magruder, Judge, concurring:

With some hestitation I concur in the opinion by Chief Judge Maris. The phrase "subject to" is of undefined content, and a reviewing court must necessarily develop its more exact meaning from case to case, bearing in mind the general scheme and purpose of the Act. A relevant consideration in this connection is whether a decision by this court opening the door to judicial review in the particular type of case would produce consequences harmful to the efficient administration of the Act.

In general it can be said that judicial review is available to sellers of commodities and landlords having housing accommodations to rent—persons whose activities are put under constraint by the mechanisms of governmental price control. The Price Administrator represents the interests of buyers and tenants in the battle against inflation, and there is no indication in the legislative history of the Act that Congress intended to bring the regulations or orders of the Administrator under judicial review at the instance of buyers or tenants.

Certainly tenants as a class are not entitled to protest a rent regulation on the ground that it froze rents in the defense-rental area at too high a level. I cannot see that a tenant is in any stronger position when the order he objects to is not of general applicability but is one affecting the particular premises he is occupying. Under the various adjustment provisions of the Rent Regulation for Housing, Area Rent Directors issue hundreds of orders giving landlords individual increases of maximum rents. It is important to the fair administration of the Act that relief in these cases be given promptly and with a minimum of red tape. Yet if we accept the reasoning in Judge McAllister's dissenting opinion, it would seem necessarily to follow that orders granting landlords' applications for adjustment of maximum rents would be protestable by the tenants affected—thereby imperiling the efficient administration of the Act.

We have upheld the provisions of the Rent Regulation restricting the eviction of tenants as being appropriate to effective rent control and authorized under § 2(d) of the Act. *Taylor* v. *Brown*, 137 F. (2d) 654, 662 (1943), cert. denied 320 U. S. 787 (1943). The landlord in most instances must obtain from the Administrator a certificate of eviction before pursuing his remedies under the local law for the recovery of possession. Some administrative [fol. 79] delay is unavoidable before the landlord is free to proceed. See *Taylor* v. *Bowles*, 145 F. (2d) 833 (E. C. A. 1944). The Administrator must first be satisfied that evictions of the character proposed are not inconsistent with the purposes of the Act or of the Regulation and would not be likely to result in the circumvention or evasion thereof. In making this determination the Administrator acts in protection of the interest of the tenant. Once

the determination is made in favor of the landlord, the tenant has no further legal interest in continued possession beyond what his contract and the local law give him. It would render somewhat illusory the landlord's right to recover possession if he were now subject to further delay during the pendency of protest proceedings instituted by the tenant, followed by review proceedings in this court.

Chief Judge Maris concurs in the foregoing views.

DISSENTING OPINION

McALLISTER, Judge, dissenting:

When the purchasers of stock in the Fifty-Five Corporation filed petitions for certificates of eviction pursuant to Section 6(b) (2) of the Rent Regulation of Housing in the New York City Defense-Rental Area, authorizing them to proceed under the local law to evict the complainants herein from their apartments, the Office of Price Administration, in accordance with its established practice, served copies of the petition, together with notices on all of the tenants concerned, advising them that they might submit any information they desired with reference to the matter, and stating that failure to return the petition with their signed statements would result in the entry of an order upon the basis of the facts available to the Rent Director.

Under Section 6(a) of the New York Rent Regulations a tenant who pays the rent to which the landlord is entitled may not be removed from any housing accommodations by action to evict or to recover possession or by exclusion from possession or otherwise, notwithstanding such tenant has no lease, or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease agreement or obligation entered into which provides for entry of judgment upon tenant's confession of breach of covenants, or which contains provisions contrary to the regulations, with certain exceptions not relevant to the present situation. However, under the Regulation, it is provided that a purchaser of leased premises may secure occupancy thereof, provided that the Office of Price Administration grant his application for a certificate authorizing the pursuit of local remedies to remove or evict a tenant of the vendor. Under the sections of the Regulation which provide for the filing of the petition authorizing pursuit

of local remedies of eviction, the Administrator makes such investigation of the application as he deems proper prior to a determination as to whether such certificate shall be granted. Briefly, then, the tenants in this case, are entitled to occupancy of the apartments, unless a purchaser of the premises, complying with the regulations, is authorized by the Office of Price Administration to evict such tenants, and thereafter secures a judgment of eviction in the local courts.

[fol. 80] The persons filing the petitions for certificates of eviction alleged that they were purchasers and holders of proprietary leases in the apartments occupied by the tenants, under a cooperative ownership plan, sponsored by the owners of the entire capital stock of the Fifty-Five Corporation. The latter had sought to convert twenty-eight apartments into cooperatives by offering for sale shares of stock of such owning corporation which they held, to purchasers, including the purchasers herein, with proprietary leases for a term of years, of the apartments involved. The purchase price for such apartments under the proposed sharing of ownership plan aggregated approximately $390,000 over and above a first mortgage of $1,500,000.

While the cooperative was being organized, the managing agents of the owning corporation wrote the Chief Attorney for the New York City Defense-Rental Area, of the Office of Price Administration, on March 5, 1945, requesting an interpretation concerning the right of purchasers of such cooperative apartments in 55 Central Park West, to obtain certificates of eviction under the provisions of Subdivision II of Section 6(b)(3) of the Rent Regulations of the Office of Price Administration. This section provides that where a cooperative is organized on or after February 17, 1945, no certificate of eviction shall be issued, unless on such date, stock in the cooperative had been purchased by persons who were then tenants of at least 80% of the apartments in the premises, or unless on such date the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to issue such a certificate.

The owners and brokers based their application for an interpretation on the latter portion of the section—that is, on the claim that substantial hardship would result to the owners of the capital stock of the corporation if they were not permitted to proceed with the conversion of some of

the apartments into cooperatives under the regulations existing prior to February 17, 1945. Annexed to their letter requesting the interpretation of the right of purchasers of such cooperative apartments to obtain certificates of eviction were certain affidavits and exhibits. On March 23, 1945, an interpretation of hardship, in favor of the owning corporation, was granted by the Office of Price Administration—erroneously, and because of fraudulent misrepresentations, as contended by the tenants—and the representatives of the owning corporation were authorized to proceed with the share-ownership plan under the regulations in existence prior to February 17, 1945. Thereafter, the alleged purchasers of the apartments involved herein applied for certificates of eviction from the Price Administrator, based on a claimed compliance with Section 6(b)(2) of the Rent Regulation for Housing in the City of New York, in effect prior to February 17, 1945, which required that the purchasers of stock for the purpose of carrying out the cooperative ownership plan, must have paid 20% of the equity and the underlying obligation of the corporation, attributable to their apartments at the time of their stock purchase.

When the foregoing applications were made for certificates of eviction, and the Office of Price Administration served copies of the petition with request for statements upon the tenants, the various tenants filed statements objecting to the granting of certificates of eviction; and the proceeding was thereafter referred to the Chief Branch [fol. 81] Attorney of the New York City Defense-Rental Area, who on a hearing took approximately 1,000 pages of testimony. He subsequently recommended denial of the applications for certificates of eviction, giving as reasons that the purchasers did not fulfill the obligation of making payment of 20% of the equity and underlying obligation of the corporation attributable to their apartments, as required by the Housing Regulation; that the letter of interpretation as to hardship issued by the Administrator, and interposed in the proceedings, was based upon misrepresentations and fraudulent statements by the real estate brokers who were acting as managers and agents for the owning corporation; that the entire presentation of the share-ownership plan by the sponsors was permeated with the implication that it was a very substantial financial transaction involving important financial commitments on the

part of the sponsors, whereas the actual fact was they had not a penny invested but were operating on an option, in the final exercise of which they hypothecated the very shares of stock which had been sold to purchasers, after payment therefor had been made, for a loan of $40,000 from a New York bank; and that this loan was for the purpose of enabling the sponsors to buy three apartments, none of which they intended to occupy, but for the sole purpose of showing a greater number of sales than were actually consummated.

The findings and recommendations of the Chief Branch Attorney were sustained by the Area Rent Director of the City of New York, and were thereafter confirmed by the Acting Regional Administrator of the Office of Price Administration for Region II in an opinion in which he stated that the purchasers had not complied with the provisions of Section 6(b)(3) of the Rent Regulation of the Office of Price Administration which required that certificates relating to eviction should only be issued if 80% of the tenants in occupancy at the time of the issuance of the certificates became purchasers of their apartments. The Acting Regional Administrator further denied the claim that the purchasers were entitled to the certificates under the "hardship" provision under the above section, and sustained the findings of fraud and misrepresentation in the procurement of the letter of interpretation. Thereafter, the action of the Chief Branch Attorney, the Area Rent Director, and the Acting Regional Administrator, was reversed by order of the Price Administrator who granted certificates of eviction to the purchasers.

Upon entry of the order granting certificates of eviction, the tenants concerned filed a protest with the Administrator setting forth that the purchasers failed to comply with Section 6(b)(2) of the Rent Regulation, and in each individual case had paid in cash less than the proportionate share of the 20% of the stock purchase price required to be paid in good faith under that section; that the letter of interpretation was unjustified, uncalled for, unwarranted, and secured without a basis in fact or in law; that the facts and documents submitted by the managers of the owning corporation seeking the letter of interpretation as to hardship contained misrepresentations and constituted a fraud upon the Administrator; that the owning corporation was not a cooperative corporation or association, and, there-

fore, did not come within the provisions of the laws and regulations of the Office of Price Administration as to the eviction of tenants of cooperative apartments; that the [fol. 82] sponsors of the cooperative plan acted in bad faith throughout the proceedings; that the property owned by the corporation had no equity over and above its encumbrances; and that the plan for the sale of the shares of stock was fraudulent and infected with bad faith and misrepresentation.

The foregoing protest was dismissed by the Price Administrator on November 2, 1945, on the ground that complainants had no standing to protest his order granting certificates of eviction, since Section 203(a) of the Emergency Price Control Act of 1942, as amended, provides that only persons "subject to" a regulation or order may file a protest thereto with the Administrator; that the Rent Regulations issued by the Administrator or his representatives prohibit or require action only by landlords; and that, therefore, only such persons, and not tenants, are "subject to" the regulations and orders within the meaning of the Act.

Section 203(a) of the Emergency Price Control Act provides that "at any time after the issuance of any regulation or order * * *, any person subject to any provision of such regulation, order or price schedule may * * * file a protest specifically setting forth objections to such provision * * *." In *Buka Coal Co.* v. *Brown*, 133 Fed. (2d) 949 (E. C. A. 1943), it was said that a person is "subject to" a provision of a regulation or order "only if such provision prohibits or requires action by him." The Administrator, therefore, in reliance upon the foregoing, contends that tenants cannot protest the order in this case because they are not "subject to" it, inasmuch as the order granting the purchasers of the apartments authority to proceed with eviction in the local courts does not require or prohibit any action on the part of the tenants, but merely authorizes the purchasers to proceed with their remedies at law to evict; and it is asserted that the Administrator has consistently construed this phrase as applying *generally* to persons of whom action was prohibited or required by a particular provision of a regulation or order." (Italics supplied.)

However valid the interpretation relied upon by the Administrator may be with regard to the standing of a person

generally to protest a price regulation, as illustrated in the Buka case, it does not follow, invariably, that no one can protest a regulation or order, regardless of its nature, unless such order or regulation prohibits or requires action by such a person. For a person may be "subject to" various regulations and orders of the Administrator, in spite of the fact that they do not prohibit or require action by him. This is seen, for example, in the promulgations of the Administrator himself, where in Section 24 of Revised Procedural Regulation No. 1, he provided for an exception to his interpretation that a person is "subject to" the provision of a maximum price regulation only if such provision prohibts or requires action by him. This exception was provided for the benefit of a producer of an agricultural commodity who may complain that a particular price regulation violates Section 3 of the Emergency Price Control Act, or the Stabilization Act, which are designed to protect such producers against the depressing effect upon their prices, of the processor's ceilings, and is found in the following portion of the section of the Revised Procedural Regulation above mentioned:

> "*Provided*, however, That a producer of an agricultural commodity shall be considered to be subject to a [fol. 83] maximum price regulation for the purpose of asserting any right created by section 3(c) of the Emergency Price Control Act of 1942, or section 3 of the Act of October 2, 1942 (Pub. Law 729, 77th Cong.) for the benefit of producers of such an agricultural commodity. Any protest filed by a person not subject to the provision protested, or otherwise not in accordance with this revised procedural regulation, may be dismissed by the Administrator."

Obviously, in the foregoing, the Administrator was not adhering to a consistent and uniform construction that a person is not subject to, and, therefore, cannot protest, a regulation, unless, by the terms of such regulation, he is prohibited from taking, or required to take, some action.

Moreover, we have recognized, in *Illinois Packing Co.* v. *Synder*, 151 Fed. (2d) 337, 338 (E. C. A. 1945), that the construction of the Statute here sought to be given by the Administrator does not apply in a case involving a subsidy regulation where a complainant contends that the regulation

contained an unlawful and discriminatory condition which excluded him from the benefit of the subsidy. In that case, the Administrator in a swer to the claim of the complainant, insisted, upon the authority of the Buka case, that the complainant had no standing to protest the regulation, because it did not require or prohibit any action by complainant. In passing upon the issue thus tendered, this court said:

> "In *Buka Coal Co.* v. *Brown*, 133 F. (2d) 949 (E. C. A. 1943), we accepted the Price Administrator's interpretation of this provision of the Act to the effect that a person is 'subject to' a provision of the maximum price regulation 'only if such provision prohibits or requires action by him.' While this interpretation may be appropriate, so far as concerns the standing of a person to protest a price regulation, it is clearly not an appropriate criterion for determining the standing of a person to protest the kind of regulation now before us, a regulation setting up a scheme of compensatory subsidy payments under defined terms and conditions. If anybody could be 'subject to' a provision of the subsidy regulation, complainant certainly would meet this requirement, since it claims to be excluded from the subsidy by a discriminatory and unlawful condition inserted in the subsidy regulation by Amendment No. 2."

We have seen that producers of agricultural commodities, and claimants to subsidy payments, are considered to be persons subject to the regulations and orders issued by the Administrator, and, therefore, entitled to protest such orders. In the one case, the court, contrary to the decision of the Administrator, declared a person "subject to" a regulation, because he had been excluded from its benefits by a discriminatory condition; in the other case, the Administrator, using the large discretion conferred upon him by the Statute, provided by regulation that a party was "subject to" the regulation, when, otherwise, he would have had no claim or standing to file a protest. Why, then, are not the tenants in this case likewise "subject to" the orders of the Administrator granting certificates to the landlord authorizing him to commence eviction proceedings? [fol. 84] Eviction would mean, in the present housing emergency, that such tenants with their families including, in this case, helplessly stricken invalids, newly returned veterans

of the war, children, and aged people would, in all probability, be deprived of living quarters in the City of New York, where they have been in the past, and are now, bona fide residents. To paraphrase the *Illinois Packing Co.* case, supra, it would seem that "if anybody could be 'subject to' a provision of * * * the Regulation, complainant [in this case, the tenants] certainly would meet this requirement," by any liberal construction of the Act—and we have heretofore held that the provisions of the Price Control Statute are to be given a liberal construction to effectuate their highly remedial purpose. *Automatic Fire Alarm Co. v. Bowles,* 143 Fed. (2d) 602 (E. C. A. 1944).

Contrary to the conclusion entertained in the majority opinion, I am of the view that one of the purposes of the Emergency Price Control Act was to give to tenants a right to remain in possession of the defense-rental area housing accommodations which they might happen to occupy, except for good and sufficient reasons to the contrary; and in the following discussion, I shall attempt to set forth the basis for my view.

In the Statement of Purposes of the Price Control Act as set forth in the first section of that Statute, it is declared that "the purposes of this Act are to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; * * * to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living."

In Section 2(d) of the Act, it is provided:

> "Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit . . . speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in . . . rent increases, . . . inconsistent with the purposes of this Act."

Briefly then, by the foregoing section, the Administrator is empowered to issue regulations to effectuate the purposes of the Act, by prohibiting or regulating speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of possession) in connection with any defense-rental area housing accommodations, *which in his judgment are likely to result in rent increases*, inconsistent with the purposes of the Act.

As observed in the accompanying opinion, it is true that the authority of the Administrator—*which is specifically referred to in the above section of the Act*—to regulate practices relating to the recovery of the possession, is incident to his control over improper rent increases. But his power to issue regulations with regard to rents and [fol. 85] tenancies is not limited to such regulation as is necessary to prevent improper rent increases.

In Section 2(g)[1], the Administrator is granted broad general powers to issue regulations to prevent the circumvention or evasion of the Act. Since the purpose of the Act, as stated therein, is to eliminate and prevent manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency, and to protect persons with relatively fixed and limited incomes from undue impairment of their standard of living, which circumvent or evade the Act, the issuance of any regulations for the purpose of protecting such persons from impairment of their standard of living, or to prevent such manipulations and diruptive practices, is authorized by the Statute and is within the intended ambit of its operation.

Whether the purpose of the Act is to restrict the right of a landlord to evict a tenant from his quarters—as well as to establish maximum rents that may be exacted—may be ascertained from an examination of the following provisions of the Statute: In Section 2(b) of the Act, it is provided that the Administrator may adopt regulations

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[1] Section 2(g) provides as follows:

"Regulations, orders, and requirements under this Act may contain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof."

fixing the rent to be charged; and in Section 2(d), above quoted, the Administrator may restrict the owner's right to terminate the tenant's occupancy, if, in his judgment, it is likely to result in rent increases. In Section 2(g) of the Act, it is provided that regulations issued under the Act shall contain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof, and Sections 4(a) and 4(b) provide that it shall be unlawful to violate the regulation fixing rents or to remove or attempt to remove the tenant, or to refuse to renew the lease, because such tenant or occupant has taken, or proposes to take action as required by the Act or regulation or order or requirement thereunder.

From the foregoing, it would appear that one of the purposes of the Statute is to protect the tenants against being forced out of their housing accommodations, without good reason.

In *Snyder* v. *Reshink*, 131 Conn. 252, 38 A. (2d) 803, a well reasoned and persuasive case, the Supreme Court of Errors of Connecticut, in discussing the purposes of the Emergency Price Control Act, observed:

> "The context of the statute in so far as applicable to rents leaves no doubts that a primary purpose is to protect the tenant in defense rental areas, not only against the exaction of excessive rents but also against being forced, without good and sufficient reason, by the owner to remove out and seek quarters elsewhere. Looking to the accomplishment of these ends, the Act provides for the adoption by the Administrator of regulations fixing the rent to be charged and also restricting the owner's right to terminate the tenant's occupancy."

In the instant case, Section 6(a) of the Regulation, applicable to the tenants in this case, provides:

> [fol. 86] "*Removal of tenant—(a) Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease

or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, unless:"

(There follow certain conditions having to do with the tenant's refusal to renew the lease, refusal of access to the landlord, violation of obligation of tenancy or committing nuisance, demolition or alteration by landlord in accordance with law, and occupancy by landlord under a right to buy or a right to possession acquired prior to November 1, 1943.)

Section 6 (b) (2) of the Regulation provides, among other matters, the following:

"*Occupancy by purchaser.* Removal or eviction of a tenant of the vendor, for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after November 1, 1943 is inconsistent with the purposes of the Act and this regulation and would be likely to result in the circumvention or evasion thereof, unless (i) the payment or payments of principal made by the purchaser, excluding any payments made from funds borrowed for the purpose of making such principal payments, aggregate 20% or more of the purchase price, and (ii) a period of three months has elapsed after the issuance of a certificate by the Administrator as hereinafter provided. For the purposes of this paragraph (b) (2), the payments of principal may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in the event the Administrator denies a petition for a certificate. If the Administrator finds that the required payments of principal have been made, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law at the expiration of three months after the date of issuance of such certificate."

Section 6 (b) (3) of the Regulation provides that no certificates of eviction shall be issued for occupancy by pur-

chasers of stock in a cooperative, with certain stated exceptions.[2]

What was said in the case of *Snyder v. Reshink*, supra, may well be repeated with respect to the same sections of the Act and largely similar sections of the Rent Regulation, which are here in controversy:

> "The provisions to which we have referred, considered in connection with the context of the Act as a [fol. 87] whole and of the regulation, give expression to a clear intent to safeguard to the fullest possible extent the tenant's right to continuing occupancy."

The conclusion to be drawn from the statute and the sections of the Regulation, in this case, seems to follow; that the purposes of the Act as stated therein, and its various provisions, as well as the pertinent sections of the Regulation, are directed not only toward safeguarding tenants against payment of higher rents in defense-rental areas, but also to the protection of their right to continuing occupancy except for good and sufficient reasons explicitly set forth in the law.

Accordingly, in this case, the tenants have, by virtue of the Statute and the Regulation, a right to remain in possession of the apartments even beyond the term of their leases, except in certain contingencies not here relevant. In this case, they could lose possession only to bona fide purchasers who became proprietary owners of the apartments. Such purchasers are required to comply strictly with various provisions of the regulations. The tenants contend that the so-called purchasers did not, in fact and in law, become owners of the apartments; that the representations upon which such ownership is asserted are fraudulent; that the whole plan by which the original owners procured an interpretation of hardship, upon which the rights of the so-called purchasers depend, was a sham; and that the proceedings in which the order was secured by virtue of which it is sought to evict them are permeated with fraud. They claim that by virtue of the right expressly conferred upon them by the Regulation, they are entitled to

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[2] If a petitioner is seeking a certificate under one of these exceptions, he files, and the certificate is issued, pursuant to Section 6 (b) (2).

possession of the apartments subject to certain well defined exceptions provided for in the Regulation. They claim that none of the exceptions have become operative; that an order based upon the supposition that they had become operative was improvidently issued; and that they are entitled, in defending their possession of the apartments, to protest such order on the ground that it was procured by fraud and misrepresentation and results in a deprivation of their rights. I am of the opinion that their contention should be sustained. A primary purpose of the Statute and the Regulation was to protect tenants in defense-rental areas against being forced by the owners to move out and seek quarters elsewhere, without good and sufficient reasons. These reasons, upon which the owner was bound to reply, in securing certificates of eviction from the Administrator, were in the nature of exceptions to the tenant's right of continuing occupancy. Where persons are granted certain specified rights by the provisions of the Emergency Price Control Act or the regulations issued thereunder, subject, however, to stated exceptions, and it is sought to deprive them of such rights by an order allegedly based upon the exceptions, such persons are entitled to file a protest to such order and contest the issue that such exceptions have become operative, as persons "subject to" the order, within the intendment of Section 203(a) of the Emergency Price Control Act, as amended.

In consideration of the foregoing, a judgment should be entered remanding the case to the Administrator with directions to hear and determine the protest on the merits.

[fol. 93] [Stamp:] United States Emergency Court of Appeals. Filed Mar. 13, 1946. Herman C. Beasley, Clerk.

UNITED STATES EMERGENCY COURT OF APPEALS

No. 271

JACK PARKER, et al.,

vs.

PAUL A. PORTER, Price Administrator

Present: Maris, C. J., and Magruder and McAllister, JJ..

JUDGMENT

This cause came on to be heard on the complaint, Respondent's motion to dismiss complaint and memorandum in support thereof, Complainants' answer and brief in opposition to motion to dismiss, and Complainants' reply memorandum, and was argued by counsel.

Upon consideration whereof, and the Court being of opinion that it is without jurisdiction to entertain the complaint, it is now here ordered and adjudged that the complaint herein be, and it hereby is, dismissed.

It is further ordered that the Clerk of this Court transmit forthwith a certified copy of the judgment to the Price Administrator.

By the Court.

Teste: Herman C. Beasley, Clerk, by J. Frederick Mattingly, Chief Deputy Clerk.

[fol. 94] UNITED STATES EMERGENCY COURT OF APPEALS

I, Herman C. Beasley, Clerk of the United States Emergency Court of Appeals, hereby certify that the foregoing printed, typewritten and mimeographed pages, numbered from 1 to 93, both inclusive, constitute a true copy of

(1) Complaint
(2) Proceedings in the United States Emergency Court of Appeals

in the case of:

No. 271

JACK PARKER, et al.,

vs.

PAUL A. PORTER, Price Administrator

as the same remain upon the files and records of said United States Emergency Court of Appeals.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said United States Emergency Court of Appeals, at the City of Washington, this 25th day of March, A. D. 1946.

Herman C. Beasley, Clerk, United States Emergency Court of Appeals. (Seal.)

[fol. 90] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 13, 1946

The petition herein for a writ of certiorari to the United States Emergency Court of Appeals is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

IN THE

Supreme Court of the United States

October Term, 1945

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. CLARENCE KASKEL, MORTON H. BARON, ROBERT HERMANN, SAMUEL OGUS, CHARLES MASLOW, GEORGE WILLETT, HARRY WIENER, CHARLES GOLDMAN, DAVID RUDBERG, WILLIAM I. HOHAUSER AND SYDNEY MAYBAUM,

Petitioners,

—vs—

PAUL A. PORTER, Price Administrator.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

Petitioners pray that a writ of certiorari issue to review a judgment of the United States Emergency Court of Appeals dismissing their complaint on the ground of lack of jurisdiction, which complaint was filed to review the respondent's dismissal of their protest filed to respondent's order granting certificates of eviction against the petitioners.

Opinions Below.

The majority and dissenting opinions of the Emergency Court of Appeals (reported in C. C. H. 3 P. C. 52, 522) (pp. 74-87) appear in the record.

Jurisdiction.

The judgment of the United States Emergency Court of Appeals sought to be reviewed was entered March 13, 1946. (p. 88). Jurisdiction of this Court is invoked under Section 204(d) of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, 50 U. S. C. App. Sec. 92(d), as amended.

Questions Presented.[1]

1. Whether under the fundamental purpose and intent of the defense housing provisions of the Emergency Price Control Act of 1942 and the Rent Regulation for Housing in the New York City Defense-Rental Area (8 Fed. Reg. 13914) petitioners-tenants have a right to remain in possession of the defense-rental area housing accommodations which they occupy and, therefore, are "subject to" respondent's order authorizing their eviction with standing to file a protest against said order under Sec. 203(a) of the Emergency Price Control Act and to file a complaint in the Emergency Court of Appeals under Sec. 204(a) of said act, or whether the sole purpose of the Emergency Price Control Act relative to defense housing was to control the amount of rents of such accommodations and to prevent speculative, unwarranted and abnormal increases therein with the result that tenants have no right to remain in possession, and have no standing to file a protest under Sec. 203(a), or a complaint under Sec. 204(a), of the Emergency Price Control Act.

2. Whether Sec. 203(a) of the Emergency Price Control Act authorizes the filing of a protest by the petitioners with respondent to contest the propriety of an order issued by respondent which authorizes certain alleged purchasers

[1] Petitioners respectfully reserve the right to argue other questions involved in this appeal in the event this petition is granted.

of stock, who obtained proprietary leases of apartments, in defense-area housing accommodations, to pursue their remedy at local law to evict petitioners, who are tenants of such accommodations.

3. Whether Sec. 204(a) of the Emergency Price Control Act authorizes the filing of a complaint by petitioners with the Emergency Court of Appeals to review the action of the respondent in dismissing, on procedural grounds, their protest contesting the validity of respondent's order which authorizes the pursuit of local remedies to evict the petitioners.

4. Whether the denial to petitioners of a right to file a protest to the order of the respondent (pursuant to Sec. 203(a) of the Emergency Price Control Act), which permitted certain alleged purchasers of stock, who obtained proprietary leases of apartments in defense area housing accommodations occupied by petitioners, to pursue their local remedy to evict petitioners, and whether the further denial to said petitioners of the right to file a complaint in the Emergency Court of Appeals (pursuant to Sec. 204 (a) of the Emergency Price Control Act), reviewing the denial of said protest, constitute a deprivation of property without due process of law.

5. Whether under Sec. 6(a) of the Rent Regulation for Housing in the New York City Defense-Rental Area petitioners are entitled to a judicial examination into the question of compliance by purchasers with the provisions of Sec. 6(b)(2) of said Regulation, where petitioners assert that such regulation has not been complied with and that the purchasers' application to evict petitioners was based on fraud and misrepresentations.

6. Whether petitioners having been invited by respondent to submit information on the original hearings on purchasers' application for certificates of eviction and having answered and participated in the hearings before the local office of Price Administration authorities to their conclusion had legal status to protest respondent's order which reversed the local and regional authorities.

Statutes and Regulations Involved.

The pertinent provisions of the Emergency Price Control Act, as amended, and of the Rent Regulation for Housing in the New York City Defense-Rental Area (7 Fed. Reg. 13914) promulgated by respondent appear herein.

Statement.[2]

Petitioners are tenants of certain apartments within the New York City defense-rental area owned by the Fifty-Five Corporation which sought to convert twenty-eight of these apartments into cooperatives by offering for sale shares of stock in such owning corporation to certain purchasers, with proprietary leases for a term of years of the apartments involved. The purchase price for such apartments under the proposed ownership sharing plan aggregated approximately $390,000 over and above a first mortgage of $1,500,000 (pp. 1, 3, 8).

While the cooperative was being organized, the managing agents of the owning corporation wrote the Chief Attorney for the New York City Defense-Rental Area, of the Office of Price Administration, on March 5, 1943 requesting an interpretation concerning the right of purchasers of such cooperative apartments in 55 Central Park West, to obtain

[2] Statement adopted from dissent of Judge McAllister of the Emergency Court of Appeals.

certificates of eviction under the provisions of Subdivision II of Section 6(b)(3) of the Rent Regulations of the Office of Price Administration. This section provides that where a cooperative is organized on or after February 17, 1945, no certificate of eviction shall be issued, unless on such date, stock in the cooperative had been purchased by persons who were then tenants of at least 80% of the apartments in the premises, or unless on such date the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to issue such a certificate (p. 8).

The owners and brokers based their application for an interpretation on the latter portion of the section—that is, on the claim that substantial hardship would result to the owners of the capital stock of the corporation if they were not permitted to proceed with the conversion of some of the apartments into cooperatives under the regulations existing prior to February 17, 1945. Annexed to their letter requesting the interpretation of the right of purchasers of such cooperative apartments to obtain certificates of eviction were certain affidavits and exhibits. On March 23, 1945, an interpretation of hardship, in favor of the owning corporation, was granted by the Office of Price Administration—erroneously, and because of fraudulent misrepresentations, as contended by the tenants—and the representatives of the owning corporation were authorized to proceed with the share-ownership plan under the regulations in existence prior to February 17, 1945. Thereafter, the alleged purchasers of the apartments involved herein applied for certificates of eviction from the Price Administrator, based on a claimed compliance with Section 6(b)(2) of the Rent Regulation for Housing in the City of New York, in effect prior to February 17, 1945, which required that the purchasers of stock for the purpose of carrying out the cooperative ownership plan, must have paid 20% of the

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IN THE

Supreme Court of the United States

October Term, 1945

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. CLARENCE KASKEL, MORTON H. BARON, ROBERT HERMANN, SAMUEL OGUS, CHARLES MASLOW, GEORGE WILLETT, HARRY WIENER, CHARLES GOLDMAN, DAVID RUDBERG, WILLIAM I. HOHAUSER AND SYDNEY MAYBAUM,

Petitioners,

—*vs*—

PAUL A. PORTER, Price Administrator.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

ALEXANDER PFEIFFER,
Attorney for Petitioners.

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equity and the underlying obligation of the corporation, attributable to their apartments at the time of their stock purchase (pp. 8, 9).

When the foregoing applications were made for certificates of eviction, the Office of Price Administration, in accordance with its established practice, served copies of the petition together with notices on the petitioners, advising them that they might submit any information they desired with reference to the matter and stating that failure to return the petition with their signed statements would result in the entry of an order upon the basis of the facts available to the Rent Director. Pursuant to this notice, the various tenants filed statements objecting to the granting of certificates of eviction; and the proceeding was thereafter referred to the Chief Branch Attorney of the New York City Defense-Rental Area, who on a hearing took approximately 1,000 pages of testimony. He subsequently recommended denial of the applications for certificates of eviction, giving as reasons that the purchasers did not fulfill the obligation of making payment of 20% of the equity and underlying obligation of the corporation attributable to their apartments, as required by the Housing Regulation; that the letter of interpretation as to hardship issued by the Administrator, and interposed in the proceedings, was based upon misrepresentations and fraudulent statements by the real estate brokers who were acting as managers and agents for the owning corporation; that the entire presentation of the share-ownership plan by the sponsors was permeated with the implication that it was a very substantial financial transaction involving important financial commitments on the part of the sponsors, whereas the actual fact was they had not a penny invested but were operating on an option, in the final exercise of which they hypothecated the very shares of stock which had been sold to purchasers, after payment therefor had been made, for

a loan of $40,000 from a New York bank; and that this loan was for the purpose of enabling the sponsors to buy three apartments, none of which they intended to occupy, but for the sole purpose of showing a greater number of sales than were actually consummated (pp. 12-19, 42, 43).

The findings and recommendations of the Chief Branch Attorney were sustained by the Area Rent Director of the City of New York, and were thereafter confirmed by the Acting Regional Administrator of the Office of Price Administration for Region II in an opinion in which he stated that the purchasers had not complied with the provisions of Section 6(b)(3) of the Rent Regulation of the Office of Price Administration which required that certificates relating to eviction should only be issued if 80% of the tenants in occupancy at the time of the issuance of the certificates became purchasers of their apartments. The Acting Regional Administrator further denied the claim that the purchasers were entitled to the certificates under the "hardship" provision under the above section, and sustained the findings of fraud and misrepresentation in the procurement of the letter of interpretation. Thereafter, the action of the Chief Branch Attorney, the Area Rent Director, and the Acting Regional Administrator, was reversed by order of the Price Administrator who granted certificates of eviction to the purchasers (pp. 9-11, 44).

Upon entry of the order granting certificates of eviction, the tenants concerned filed a protest with the Administrator setting forth that the purchasers failed to comply with Section 6(b)(2) of the Rent Regulation, and in each individual case had paid in cash less than the proportionate share of the 20% of the stock purchase price required to be paid in good faith under that section; that the letter of interpretation was unjustified, uncalled for, unwarranted, and secured without a basis in fact or in law; that the facts and documents submitted by the managers of the

owning corporation seeking the letter of interpretation as to hardship contained misrepresentations and constituted a fraud upon the Administrator; that the owning corporation was not a cooperative corporation or association, and, therefore, did not come within the provisions of the laws and regulations of the Office of Price Administration as to the eviction of tenants of cooperative apartments; that the sponsors of the cooperative plan acted in bad faith throughout the proceedings; that the property owned by the corporation had no equity over and above its encumbrances; and that the plan for the sale of the shares of stock was fraudulent and infected with bad faith and misrepresentation (pp. 12-19).

The foregoing protest was dismissed by the Price Administrator on November 2, 1945, on the ground that complainants had no standing to protest his order granting certificates of eviction, since Section 203(a) of the Emergency Price Control Act of 1942, as amended, provides that only persons "subject to" a regulation or order may file a protest thereto with the Administrator; that the Rent Regulations issued by the Administrator or his representatives prohibit or require action only by landlords; and that, therefore, only such persons, and not tenants, are "subject to" the regulations and orders within the meaning of the Act (p. 10).

The petitioners thereupon filed a complaint in the United States Emergency Court of Appeals under Sec. 204(a) of the Emergency Price Control Act. The respondent moved to dismiss the complaint upon the ground that the petitioners were without standing to file it. On March 13, 1946, the Emergency Court of Appeals entered a judgment dismissing the complaint (pp. 1-20, 23, 88). Three opinions were rendered:

The majority opinion held that the essential purpose of the Emergency Price Control Act was not to accord to

tenants administrative and judicial review of the respondent's action in permitting their landlords to undertake eviction proceedings against them, that said Act does not give tenants any right to remain in possession of defense area housing accommodations, which they might happen to occupy, and that, therefore, no rights of the tenants were affected by respondent's order authorizing eviction so as to give said tenants standing to protest under Sec. 203(a) of the Emergency Price Control Act, nor to file a complaint under Sec. 204(a) thereof. (pp. 74-78).

The concurring opinion, rendered "with some hesitation", held that tenants had no standing to bring the regulations or orders of the respondent under judicial review, that the respondent acts in protection of the tenants' interests, that the tenants have no further legal interest in continued possession once a determination has been made by the respondent in favor of the landlord and that further delays under the act would result if the tenants were granted a right to protest respondent's orders; that to allow tenants the right to file protest and complaint would subject the landlord to too many reviews of respondent's order (pp. 78, 79).

The dissent held that the tenants were "subject to" the orders of the respondent granting certificates to the landlord authorizing him to commence eviction proceedings, that one of the purposes of the Emergency Price Control Act is to give tenants a right to remain in possession of the defense-rental area housing accommodations which they might happen to occupy, that both the statement of purposes of the Act and the provisions thereof make it clear that one of the purposes of the act is to protect the tenants against being forced out of their housing accommodations without good reason, that the Rent Regulation for Housing in the New York City Defense-Rental Area gives the tenants a right to continuing occupancy, that the tenants have a right to challenge any contingency which would deprive them of

possession, that the tenants had, pursuant to invitation from the Office of Price Administration, filed statements objecting to the granting of certificates of eviction on the original hearings and proceeded with such hearings to their conclusion and that the tenants are entitled to file a protest to the respondent's order and to contest the issues, as persons "subject to" the order within the intendment of Sec. 203(a) of the Emergency Price Control Act, as amended (pp. 79-87).

Specification of Errors.

The United States Emergency Court of Appeals erred:

1. In dismissing the complaint filed by the petitioners under Sec. 204(a) of the Emergency Price Control Act, as amended, to review the prior action of the respondent in dismissing petitioners' protest on procedural grounds.

2. In failing to hold that the petitioners, tenants of housing accommodations with respect to which the respondent has ordered a certificate of eviction to be issued, are persons "subject to" such order within the meaning of Sec. 203(a) of the Emergency Price Control Act with standing to file a protest to said order under Sec. 203(a) of said act.

3. In failing to hold that under the defense-housing provisions of the Emergency Price Control Act, petitioners-tenants enjoyed a right to continued occupancy of defense-housing accommodations and in holding that the sole purpose of said defense-housing provisions of the Emergency Price Control Act was to control the amount of rents of such accommodations.

4. In failing to hold that one of the purposes of the Emergency Price Control Act to accord to petitioners,

tenants of defense-housing accommodations, administrative and judicial review of the action of respondent in permitting the landlord of petitioners to undertake eviction proceedings against petitioners.

5. In failing to hold that under the Rent Regulation for Housing in the New York City Defense-Rental Area, promulgated by the respondent, petitioners had a vested interest in continued occupancy of the defense housing of which they were in possession subject only to being divested by the existence of circumstances set forth in the law and the regulation and that said tenants had standing to inquire into the validity and merits of the application made to divest them from possession and occupancy, and to protest the order of the respondent which granted certificates authorizing their eviction.

6. In holding that the respondent's determination that the evictions sought by the landlords were not inconsistent with the purpose of the Act or of the Regulation is not subject to administrative review by the respondent or judicial review by the Emergency Court of Appeals, at the instance of the petitioners-tenants whose evictions are authorized by respondent's orders.

7. In holding that tenants have no right to protest the Price Administrator's order authorizing petitioners' eviction where said order is contested as failing to comply with the fundamental intent of the Emergency Price Control Act and Regulation to prevent an evasion and circumvention by recognizing a cooperative ownership plan which did not comply with the provisions of Section 6(b)(2) of said Regulation as to requisite cash payments and which was based upon fraudulent misrepresentations, as found by the local Office of Price Administration authorities and confirmed by Regional authorities.

Reasons for Granting the Writ.

The questions raised by this petition are of great public importance, involving the basic meaning and construction of the defense-housing provisions of the Emergency Price Control Act and the Regulation promulgated thereunder. The issue tendered by the majority and minority opinions of the Emergency Court of Appeals is whether a prime purpose of the defense-housing provisions of the Emergency Price Control Act is to accord to tenants of defense-housing accommodations a right to continuing occupancy of their premises, making them persons "subject to" the orders of the Price Administrator (under Sec. 203(a) of the Emergency Price Control Act), as held by the minority opinion herein, with standing to protest the Price Administrator's certificate authorizing their eviction and to file a complaint in the Emergency Court of Appeals (under Sec. 204(a) of the Act), or whether the purpose of said Act is to control rents of such accommodations, depriving tenants of any right to protest their eviction.

The interpretation of the purposes of the defense-housing provisions of the Emergency Price Control Act has never before been declared by this Court. The construction of the Act affects the constitutional rights of the multitude of tenants residing in defense-housing areas to the due process of hearings in matters where the Price Administrator authorizes eviction proceedings. An extremely acute housing shortage and emergency exists throughout the nation, and the question of the rights of tenants to occupancy of defense-housing is critical to millions. "Eviction would mean, in the present housing emergency, that such tenants with their families, including, in this case, helplessly stricken invalids, newly returned veterans of the war, children, and aged people would, in all probability, be deprived of living quarters in the City of New York, where

they have been in the past, and are now, bona fide residents," to quote from Judge McAllister's dissenting opinion in the Emergency Court of Appeals, discussing the effect of eviction in the case at bar.

A construction by this Court of the fundamental rights of tenants to continue occupancy of defense-housing accommodations is required to clarify the position of tenants throughout the nation and to provide assurance that tenants cannot be ousted from possession by alleged cooperative ownership plans which are attacked for failure to comply with the Regulation and because of fraud and misrepresentation, without being accorded the right to administrative protest and judicial review thereof.

The interpretation of Secs. 203(a) and 204(a) of the Act by the respondent and by the majority of the Emergency Court of Appeals are in direct conflict with the plain wording and intent of the Statute and Regulation and deprive the petitioners of a valuable right to continued occupancy of their apartments without the right to test the unreasonableness of the respondent's order authorizing their eviction.

1. *The petitioners were "subject to" the respondent's order under the Emergency Price Control Act and the Regulation with standing to file a protest under Sec. 203(a) of the Act for administrative review, and a complaint under Sec. 204(a) for judicial review, of respondent's order authorizing petitioners' eviction.*

Petitioners' protest was filed pursuant to Sec. 203 (a) of the Emergency Price Control Act, which provides that:

> "at any time after the issuance of any regulation or order * * *, any person subject to any provision of such regulation, or order or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision * * *."

The complaint in the Emergency Court of Appeals was filed by petitioners pursuant to Sec. 204 (a) of the Act, which provides that:

> "any person who is aggrieved by the denial or partial denial of his protest may * * * file a complaint with the Emergency Court of Appeals * * * specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part."

Even under the strictest construction of the Act, petitioners are persons "subject to" respondent's order authorizing their eviction. Both the majority and minority opinions of the Emergency Court of Appeals in the instant case rejected the Administrator's contention that a person is subject to a regulation or order within the meaning of Sec. 203 (a) only if the regulation or order prohibits or requires action by him. The right to file a protest against a regulation or order of the Price Administrator was held not to be restricted to those whose action was prohibited or required, since the Price Administrator himself, in Sec 24 of Revised Procedural Regulation No. 1, provided an exception to his interpretation that a person is "subject to" the provision of a maximum price regulation only if such provision prohibits or requires action by him. This exception was provided for the benefit of the producer of an agricultural commodity who may complain that a particular price regulation violates Sec. 3 of the Emergency Price Control Act, or the Stabilization Act, which are designed to protect such producers against the depressing effect upon their prices, of the processor's ceiling, which exception is found in the following portions of the Revised Procedural Regulation (Revised Procedural Regulation No. 1, Sec. 1300.24; 7 Fed. Reg. 8961):

"That a producer of an agricultural commodity shall be considered to be subject to a maximum price regulation for the purpose of asserting any right created by Sec. 3(c) of the Emergency Price Control Act of 1942 * * * for the benefit of producers of such an agricultural commodity. Any protest filed by a person not subject to the provision protested, or otherwise not in accordance with this Revised Procedural Regulation, may be dismissed by the Administrator."

This proviso clearly extends the concept of the phrase "subject to" and demonstrates a departure by the Administrator from a consistent and uniform construction that a person is not subject to, and, therefore, cannot protest, a regulation, unless, by the terms of such regulation, he is prohibited from taking, or required to take, some action.

Furthermore, the Emergency Court of Appeals in *Illinois Packing Co.* v. *Snyder*, 151 Fed. (2d) 337 (ECA 1945), held that a person who contended that he was arbitrarily and capriciously discriminated against in a regulation providing for the payment of subsidies, was a person "subject to" the regulation within the meaning of Sec. 203 (a). In passing upon the issue thus tendered, the Emergency Court of Appeals said:

"In *Ruka Coal Co.* v. *Brown*, 133 F. (2d) 949 (E. C. A., 1943), we accepted the Price Administrator's interpretation of this provision of the Act to the effect that a person is 'subject to' a provision of the maximum price regulation 'only if such provision prohibits or requires action by him.' While this interpretation may be appropriate, so far as concerns, the standing of a person to protest a price regulation, it is clearly not an appropriate criterion for determining the standing of a person to protest the kind of regulation now before us,

a regulation setting up a scheme of compensatory subsidy payments under defined terms and conditions. If anybody could be 'subject to' a provision of the subsidy regulation, complainant certainly would meet this requirement, since it *claims to be excluded from the subsidy by a discriminatory and unlawful condition inserted in the subsidy regulation* by Amendment No. 2." (Italics supplied.)

Since in one case the Emergency Court of Appeals declared a person "subject to" a regulation because he had been excluded from its benefits by a discriminatory condition, and in another, the Administrator, pursuant to the broad discretion conferred upon him by the Statute, provided by regulation that a party was "subject to" the regulation, when otherwise he would have had no claim or standing to file a protest, it is apparent that the tenants (petitioners herein) likewise are "subject to" the orders of the Administrator granting certificates to the landlord authorizing him to commence eviction proceedings.

The petitioners were "subject to" the Price Administrator's order, since there may be a distinction, but no pragmatic difference, between the Price Administrator's authorizing the landlord to evict petitioners and the eviction proceedings themselves under local law, the necessary result of which is a final order causing the removal of petitioners from their homes. The equivalence of permission to evict and the subsequent eviction proceedings is underscored by the fact that the petitioners have no defense to the summary proceedings at local law which could be asserted in the Municipal Court of New York City, for by Section 204 (d) of the Emergency Price Control Act of 1942, said Court has no jurisdiction to consider the validity of an order of the Price Administrator. The issues of fraud in the procurement of the letter of interpretation of hardship, which formed the basis for

the issuance of the said certificates relating to eviction, cannot be attacked collaterally in the Municipal Court. Nor can the question whether the purchasers had complied with the prerequisites of Section 6 (b) (2) of the New York City Regulation for Housing be properly decided in the Municipal Court. Similarly, the question whether the cooperative ownership plan sponsored by Messrs. Earle and Carver was a true cooperative, as defined by Section 85 of the New York Cooperative Corporation Law and thereby entitled participants in the plan to proceed under subdivision II of Section 6(b)(2) of the New York City Rent Regulation for Housing to obtain certificates of eviction of the complainants herein, be decided in summary proceedings in the Municipal Court of the City of New York. Under Section 204 (d) of the Emergency Price Control Act the Emergency Court of Appeals has exclusive jurisdiction to test the propriety of the order of the Price Administrator issuing the certificates of eviction and the subsequent dismissal of the complainants' protest thereto.

The provisions of the Emergency Price Control Act, which are to be accorded a liberal construction to effectuate their highly remedial purposes (*Automatic Fire Alarm Co.* v. *Bowles,* 143 Fed. (2d) 602 (E. C. A., 1944) were given a broad interpretation in *Yakus* v. *United States,* 321 U. S. 414, where this Court, speaking through Chief Justice Stone liberally construed the provisions of the Emergency Price Control Act for judicial review of the Administrator as follows, at page 433:

> "In addition, the present Act seeks further to avoid that confusion by restricting judicial review of the Administrator's determination to a single court. Such a procedure, so long as it affords *to those affected* a reasonable opportunity to be heard and present evidence does not offend against due process. *Bradley* v. *Richmond,* 227

U. S. 477; *First National Bank* v. *Weld County*, 264 U. S. 450; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337." (Italics supplied.)

The use of the expression, "those affected", by the Chief Justice shows clearly the intent of the Court to construe the judicial review provisions of the Emergency Price Control Act as all inclusive rather than restricted to a particular class of persons. In defining the power of the Emergency Court of Appeals to review actions of the Administrator, Mr. Justice Stone continued at page 437:

> "The Emergency Court has power to review all questions of law including the question where the Administrator's determination is supported by evidence, and any question of the denial of due process for any procedural error appropriately raised in the course of the proceedings."

It therefore appears that although Congress was impelled by the pressure of the emergency situation to authorize summary action by the respondent in the first instance, this Court in construing this Act made it clear that the action of the Administrator would always be subject to later judicial review. (*Yakus* v. *United States* (1943), 321 U. S. 414, 442.)

The legislative history of the Emergency Price Control Act of 1942, as amended, shows the clear intent of Congress to permit any one affected by an order of the Price Administrator to appeal therefrom to the Emergency Court of Appeals. Thus, the declaration of purposes, as set forth in the report of the Committee of Conference on the disagreeing votes of the two houses of Congress, on the amendment of the Senate to House of Representatives Bill No. 5990, which was the proposed Emergency Price Control Act as reported in Volume 88 of the Congressional Record at page

661, January 26, 1942 (four days before the effective date of the Act) stated one of the policies of the Act to be:

"(11) the protection of the interests of those subject to the Act by providing procedures for administration and review."

The Record defined this policy at page 663 as follows:

"*Administration and Review.* Both the House bill and the Senate amendment vested the administration of the bill in a single Price Administrator * * * the Senate amendment provided (2) * * * direct judicial review of regulations and orders of the Administrator by an Emergency Court of Appeals composed of federal judges designated for service at such court by the Chief Justice of the United States."

The Record continues as follows, pages 663, 664:

"The Senate amendment also provided that a statement of considerations must accompany every regulation or order establishing a maximum price, *that every such regulation or order should be subject to protest proceedings*, that if any protest should be denied the Administrator must advise the protestant of the grounds upon which such denial was based * * *."

The Conference agreement adopted the provisions of the Senate amendment (Volume 88 Congressional Record, p. 664).

Congressman Henry V. Steagall, speaking in behalf of the Conference Report stated at pages 664, 665, Volume 88 Congressional Record:

"Another provision that has been controversial throughout the entire consideration of the bill hinges on the

question of the authority to be established for the administration of the law. The House bill provided for the administration of the law by a single Administrator whose office was created by the bill. There was included in the House bill, as reported by the Committee on Banking and Currency, a provision establishing a special Appellate Court of not less than three circuit or district court judges, named by the Chief Justice of the United States, with the right to add additional members whenever required, the Court to be permitted to sit in divisions when necessary. *The provision also gave anybody dissatisfied with an order, ceiling or regulation of the Administrator the right to appear and protest the action of the Administrator.* The Administrator was required to take action on such protest within 30 days. Thirty days would be required in which an appeal might be made to the Emergency Court of Appeals established under the bill, with the duty of the Court to review the decision of the Administrator in establishing ceilings or other regulations under the bill.

"The Conference Report follows substantially the bill reported by the House Committee on Banking and Currency. That is the plan embodied in the Conference Report." (Italics supplied.)

During the course of the debate in the House on the Conference Report, Congressman William T. Pheiffer of New York, speaking in behalf of the Report, stated at page 687:

"* * * under the provisions of the Conference report, when the Price Administrator after all this investigation which he makes fixes a price, *anyone who is aggrieved by reason of that decision has the right to enter*

a protest. He may file a protest and within 30 days he has a right to have a decision upon his protest. If that is denied, then he has the right to appeal to a court, not an administrative board but an independent court set up and established under the provisions of the Conference report, the members of which court are appointed, if you please, by the Chief Justice of the United States Supreme Court. That court has the right and it is the duty to review the proceedings under which the price ceiling was fixed by the Administrator. If the Administrator does not follow the law which this Congress lays down, he is reversed and may I say that we are determining that policy. It is a legislative policy. * * *. The Congress lays down the standards and establishes the procedure and tells and directs the Administrator what he shall do." (Italics supplied.)

A motion to recommit the Conference Report to the Committee of Conference was defeated (Volume 88 Congressional Record, p. 688) and the Conference Report was confirmed by the House (p. 688) and by the Senate (p. 725). No extensive discussion concerning the Administration and Review provisions of the Conference Report appeared in the report of the debate thereon in the Senate.

2. *Under Sec. 6(a) of the Rent Regulation for Housing in the New York City Defense-Rental Area, promulgated by respondent, tenants are given a vested right to remain in possession of defense-area housing, subject to divestiture by eviction under Sec. 6(b)(2) of said regulation by a purchaser whose cash payments aggregate 20% or more of the purchase price. Having asserted that the purchasers failed to comply with said Regulation and that their application was based on fraud and misrepresentation, petitioners are entitled to a judicial examination into the purchasers' compliance with the conditions which may operate to divest*

them of their occupancy, and to protest respondent's order of eviction based on the assumption that such conditions were operative. To deny petitioners such right is a deprivation of property without due process of law.

Sec. 6(a) of the Rent Regulation for Housing in New York City Defense-Rental Area, promulgated by respondent, provides:

> "*Removal of Tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, *no tenant shall be removed from any housing accomodations,* by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary thereto, *unless:*" (Italics supplied.)

(There follow certain conditions having to do with the tenant's refusal to renew the lease, refusal of access to the landlord, violation of obligation of tenancy or committing nuisance, demolition, or alteration by landlord in accordance with law, and occupancy by landlord under a right to buy or a right to possession acquired prior to November 1, 1943.)

Section 6(b)(2) of the Regulation provides, among other matter, the following:

> "*Occupancy by purchaser. Removal or eviction of a tenant of the vendor,* for occupancy by a purchaser who has acquired his rights in the housing accommodations

on or after November 1, 1943 *is inconsistent with the purposes of the Act and this regulation and would be likely to result in the circumvention or evasion thereof,* unless (i) the payment or payments of principal made by the purchaser, excluding any payments made from funds borrowed for the purpose of making such principal payments, aggregate 20% or more of the purchase price, and (ii) a period of three months has elapsed after the issuance of a certificate by the Administrator as hereinafter provided. For the purpose of this paragraph (b) (2), the payments of principal may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in the event the Administrator denies a petition for a certificate. If the Administrator finds that the required payments of principal have been made, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law at the expiration of three months after the date of issuance of such certificate." (Italics supplied.)

The Regulation clearly and unambiguously defines the nature of petitioners' interest in and to the contir ed occupancy of the defense-housing accommodations of which they are in possession: This interest is a fully vested right to possession unless and until certain contingencies arise. Sec. 6(a) of the Regulation states that so long as rent is paid, "no tenant shall be removed from any housing accommodations by action to evict or to recover possession * * * *unless*" certain conditions exist which may act to divest him of possession. Petitioners contend that it is the intention of the Act and the Regulation to give them the right to challenge these conditions which serve to divest and defeat their continuing occupancy granted by the Regula-

tion, by filing a protest under Sec. 203(a) of the Emergency Price Control Act.

In order to divest petitioners of their occupancy, a purchaser must comply strictly with the various provisions of Sec. 6(b)(2) of the Regulation: The payments of principal made by the purchaser, excluding any payments made from funds borrowed for the purpose of making such principal payments, must aggregate 20% or more of the purchase price and the removal or eviction of a tenant must not be "inconsistent with the purposes of the Act and this Regulation" and must not be likely "to result in the circumvention or evasion thereof". The petitioners contend that the "purchasers" in each individual case paid in cash less than the proportionate share of the 20% of the stock purchase price required to be paid in good faith under the Regulation; that the so-called purchasers did not, in fact and in law, become owners of the apartments; that the representations upon which such ownership is asserted are fraudulent; that the whole plan by which the original owners procured an interpretation of hardship, upon which the rights of the so-called purchasers depend, was a sham; and that the proceedings in which the order was secured from the respondent by virtue of which it is sought to evict them are permeated with fraud and constitute a scheme to obtain a large sum of money as the result of the sale of the apartments in the property involved, in which there was no equity over and above the underlying encumbrances and that the very shares of stock of the owning corporation which were agreed to be sold to the "purchasers" were hypothecated as collateral security for a loan which was used by one of the owners of the stock of the owning corporation to acquire proprietary leases and that the entire course of the proceedings resulting in the order permitting petitioners' eviction "was and is unfair, unreasonable, arbitrary, inequitable and capricious and not in accordance with law" (p. 19).

Respondent having moved to dismiss the complaint, these allegations of the complaint must be deemed to be true. Petitioners contend that it is their right a judicial review of the propriety of the order which operated to divest them of their right to continued occupancy under Sec. 6(a) of the Regulation since petitioners claim that such contingencies did not become validly operative, that an order based upon the supposition that they had become operative was improvidently issued and that they are entitled in defending their possession of the apartments, to challenge such order on the ground that it was procured by fraud and misrepresentation and results in a deprivation of their rights. This claim is not only supported by the underlying purpose of the Act and the Regulation but is based on the repeatedly recognized constitutional right under the Fifth Amendment that no person shall be deprived of property without due process of law. Due process in the instant case surely should permit tenants, who are the objects of certificates of eviction, to be accorded a reasonable judicial review of their objections to the propriety of the grounds upon which such certificates are bottomed. Petitioners have legal status as persons "subject to" an order permitting their eviction to file a protest to such order and, having been granted the right of continued occupancy by the Act and Regulation, subject to stated exceptions, to contest the validity and operability of such exceptions by which it is sought to deprive them of their rights of occupancy.

In *Bowles* v. *Willingham* (1943), 421 U. S. 503, this Court in passing on the constitutionality of the Emergency Price Control Act upheld the reasonableness of the procedure whereby no hearings were permitted to landlords before the effectuation of maximum rent orders. The Court, through Mr. Justice Douglas, at page 521, however, stated:

> "To require hearings for thousands of landlords before any rent control order could be made effective might

have diverted the program of price control * * *. *But where Congress has provided for judicial review after the regulations or orders have been made effective, it has done all that due process under the War emergency requires.*" (Italics supplied.)

The restriction in the majority opinions of the Emergency Court of Appeals of the right of the tenants to appeal from the Price Administrator's order, in the face of contentions that such order was procured by fraud and was contrary to the express provisions of regulations promulgated by the Administrator, results in depriving the tenants of property without due process of law.

To hold as the majority of the Court below did that the petitioners have no more than a "regulatory", as distinct from a property, or statutory, right to possession is to contravene not only the express purpose of the Act and the Regulation but to repose in the Price Administrator an unbridled discretion insofar as the rights of the tenants are concerned, foreclosing the tenants from any right to appeal from the Administrator's actions. To accede to this contention would be to hold that the action of the Price Administrator, which was challenged—first in the protest to the Price Administrator and reiterated in the complaint in the Emergency Court of Appeals as "unfair, unreasonable, arbitrary, inequitable and capricious and not in accordance with the law" (p. 19)—is final and that the Price Administrator, without hearing, had the power to reverse the report and findings of the Chief Branch Attorney, the Area Rent Director and the Regional Administrator, without subjecting his decision to judicial review by any court of law. Such holding would place the Price Administrator in the position of unchallengeable power to cause the eviction of tenants, capriciously, arbitrarily and inequitably (as is claimed in this case) at a time when an acute housing shortage prevails throughout the country, without permit-

ting such persons sought to be dispossessed to appeal from such arbitrary exercise of authority.

It could never have been the intention of Congress to constitute the respondent the sole judge of his own actions. Congress surely never intended that respondent would have the power to reverse three of his subordinates, without further hearing, and that his action in so doing, based on his sole judgment, would be unchallengeable in any court of law.

In the concurring opinion rendered in the Court below, it was said that the consequence of opening the door to judicial review would be to subject the landlord's right to recover possession to further delay during the pendency of protest proceedings instituted by the tenant followed by review proceedings in the Emergency Court of Appeals. Such "delays" are the "law's delays" of due process, of the right to a judicial review of the respondent's order. If a choice must be made between the "delay" of a court review of an eviction order, which is attacked as arbitrary and capricious, and the rights of the tenants to a full and fair hearing of their complaints, the choice should be exercised in favor of judicial review. Otherwise, under the guise of the argument of "delay", administrative injustice would be sanctioned. Any legal proceeding can be characterized as delay or "red tape", as the concurring opinion has it. Legal proceedings rather should be regarded as safeguards to rights which are not lightly to be denied. The persistent attempt in this case of the Price Administrator to shield his order of eviction from further administrative and judicial scrutiny, made after the Chief Branch Attorney, the Rent Director and the Acting Regional Director had found misrepresentation and failure of compliance with existing regulations, underscores the necessity for permitting tenants to protest under Sec. 203 (a), and to review any denial of such protest under Sec. 204 (a) of the Emergency Price Control Act.

3. *Petitioners, having been invited by the Office of Price Administration to submit information on the original hearing on the "purchaser's" applications for certificates of eviction, and having answered and participated in the hearing before the Chief Branch Attorney of the New York City Defense-Rental Area to its conclusion, had legal status to protest respondent's order which reversed the recommendations of the Chief Branch Attorney which was confirmed by the Rent Director and the Acting Regional Director. Petitioners were persons "subject to" such order under Sec. 203 (a) of the Emergency Price Control Act.*

When the "purchasers" of stock in the owning corporation filed petitions for certificates of eviction, pursuant to Sec. 6(b)(2) of the Rent Regulation for Housing in the New York City Defense-Rental Area, authorizing them to proceed under the local law to evict the petitioners from their apartments, the Office of Price Administration, in accordance with established practice, served copies of the petition, together with notices on all the tenants concerned, advising them that they might submit any information they desired with reference to the matter, and stating that failure to return the petition with their signed statements would result in the entry of an order upon the basis of the facts available to the Rent Director (pp. 77, 79, 80). Pursuant to this notice, the petitioners filed statements objecting to the granting of certificates of eviction. The proceeding was thereafter referred to the Chief Branch Attorney of the New York City Defense-Rental Area, who, on a hearing took approximately 1,000 pages of testimony. The Chief Branch Attorney's recommendation that the application for certificates of eviction be denied was sustained by the Area Rent Director of the City of New York, and thereafter confirmed by the Acting Regional Administrator of the Office of Price Administration for Region II (pp. 9-11).

The invitation to the petitioners to participate in the hearings was a practical construction of their rights by the

Office of Price Administration, and constituted the petitioners, in law, as indeed they were in fact, parties "subject to" the Administrator's orders authorizing their eviction. The only method that petitioners had under the Act to review the Administrator's order, which reversed recommendations made as the result of a hearing in which petitioners were invited to, and did, participate, was to file a protest to the Administrator's order. Respondent could not invite petitioners to participate in hearings and then deprive them of any further right of administrative or judicial review once he had issued an adverse order.

The majority of the Court below held that the invitation by the Administrator to the petitioners "was doubtless wise administrative procedure which enabled the Administrator to become fully informed with respect to all the facts which might have any bearing upon the questions raised by the petitions, but it did not, as the complainants urged, make the tenants parties to the proceedings * * *. No showing which any one of the tenants might have made with respect to his own situation and necessities could have had the slightest bearing upon the Administrator's determination of the question raised by the landlord's petitions" (p. 77). However, the showing which the tenants made concerning the fraud, misrepresentation and the failure to comply with its regulation as to cash payment, had every bearing on the determination by the Chief Branch Attorney, and his superiors, on the validity of granting the "purchasers'" application. It was not the showing as to petitioners' "own situation and necessity", but the attack upon the validity of the application to oust the petitioners that was of importance. Petitioners had and have a very real interest in the denial of the applications for certificates authorizing their eviction.

4. *One of the fundamental purposes of the defense housing provisions of the Emergency Price Control Act and the Regulation was to permit continued occupancy of defense*

housing of which tenants were in possession, and not merely to regulate the price of defense housing accommodations. The tenants, therefore, were "aggrieved" by the dismissal of their protest, with standing to file a complaint under Sec. 204 (a) of the Emergency Price Control Act, and were "subject to" respondent's order, with standing to file a protest under Sec. 203 (a) thereof.

The basic issue with which the majority and minority of the Court below were concerned related to the fundamental purpose of the Emergency Price Control Act and the regulations promulgated pursuant thereto. The majority held that "an examination of the Emergency Price Control Act discloses that it was not one of its purposes to give to tenants any right to remain in possession of the Defense-Area Housing accommodations which they might happen to occupy * * * its sole purpose * * * was to control the amount of rents of such accommodations and to prevent speculative, unwarranted and abnormal increases therein" (p. 76).

The minority specifically disagreed with this construction and stated: "Contrary to the conclusion entertained in the majority opinion, I am of the view that one of the purposes of the Emergency Price Control Act was to give to tenants a right to remain in possession of the defense rental area housing accommodations which they might happen to occupy, except for good and sufficient reasons to the contrary * * *" (p. 84).

The consequence of the majority viewpoint is that petitioners having no right to occupancy, are not parties "subject to" respondent's order authorizing their eviction. The result of the minority opinion constitutes petitioners as subject parties, since their right to continue in occupancy is affected by the respondent's order.

Both the wording of the Act and the Regulation show the clear intention of Congress to protect tenants, in the extremely critical housing shortage, in their right to continued occupancy of defense-housing. It is untenable to

differentiate between the regulation of reasonable rental of defense housing accommodations and the right to continuing occupancy thereof. One is a function of the other, and Congress surely had in mind the continued possession of premises in defense housing areas as well as the payment of reasonable rental therefor.

In the Statement of Purposes of the Price Control Act (Sec. 1(a)), it is declared that "the purposes of this Act are to stabilize prices and to prevent speculative, unwarranted and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcity caused by or contributing to the national emergency * * * to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living."

In Sec. 2 (d) of the Act, it is provided:

> "Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit * * * speculative or manipulative practices or renting or leasing practices (*including practices relating to recovery of the possession*) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or likely to result in * * * rent increases * * * inconsistent with the purposes of this Act." (Italics supplied.)

By the foregoing section, the Administrator is empowered to issue regulations to effectuate the purposes of the Act, by prohibiting or regulating speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of possession) in connection with any

defense-rental area housing accommodations, *which in his judgment are likely to result in rent increases*, inconsistent with the purposes of the Act.

The authority of the Administrator—*which is specifically referred to in the above section of the Act*—to regulate practices relating to the recovery of the possession, may be incident to his control over improper rent increases. But his power to issue regulations with regard to rents and tenancies is not limited to such regulation as is necessary to prevent improper rent increases.

In Sec. 2(g), the Administrator is granted broad general powers to issue regulations to prevent the circumvention or evasion of the Act. Since the purpose of the Act, as stated therein, is to eliminate and prevent manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency, and to protect persons with relatively fixed and limited incomes from undue impairment of their standard of living, which circumvent or evade the Act, the issuance of any regulations for the purpose of protecting such persons from impairment of their standard of living, or to prevent such manipulations and disruptive practices, is authorized by the Statute and is within the intended ambit of its operation.

Whether the purpose of the Act is to restrict the right of a landlord to evict a tenant from his quarters—as well as to establish maximum rents that may be exacted—may be ascertained from an examination of the following provisions of the Statute: In Sec. 2(b) of the Act, it is provided that the Administrator may adopt regulations fixing the rent to be charged; and in Sec. 2(d), above quoted, the Administrator may restrict the owner's right to terminate the tenant's occupancy, if, in his judgment, it is likely to result in rent increases. In Sec. 2(g) of the Act, it is provided that regulations issued under the Act shall con-

tain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof, and Secs. 4(a) and 4(b) provide that it shall be unlawful to violate the regulation fixing rents *or to remove or attempt to remove the tenant,* or to refuse to renew the lease, because such tenant or occupant has taken, or proposes to take action as required by the Act or regulation or order or requirement thereunder.

From the foregoing, it would appear that one of the purposes of the Statute is to protect the tenants against being forced out of their housing accommodations, without good reason.

In *Snyder* v. *Reshink*, 131 Conn. 252, 38 A. (2d) 803 the Supreme Court of Errors of Connecticut, in discussing the purposes of the Emergency Price Control Act, observed:

> "The context of the statute in so far as applicable to rents leaves no doubt that a primary purpose is to protect the tenant in defense rental areas, not only against the exaction of excessive rents but also against being forced, without good and sufficient reason, by the owner to move out and seek quarters elsewhere. Looking to the accomplishment of these ends, the Act provides for the adoption by the Administrator of regulations fixing the rent to be charged and also restricting the owner's right to terminate the tenant's occupancy."

CONCLUSION.

For the above reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

ALEXANDER PFEIFFER,
Attorney for Petitioners.

Dated, New York, March 31st, 1946.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 1075 80

JACK PARKER, et al.,

Petitioners,

—*vs.*—

PAUL A. PORTER, Price Administrator.

PETITIONERS' REPLY BRIEF

ALEXANDER PFEIFFER,
Attorney for Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 1075

JACK PARKER, et al.,

Petitioners,

—*vs.*—

PAUL A. PORTER, Price Administrator.

PETITIONERS' REPLY BRIEF

A. Importance of Issues Presented.

The government in its brief states that the "issue presented" of the tenants' right to judicial and administrative review "is important" (p. 4). The *amici curiae,* however, urge that this case does not present any question of sufficient substance to justify certiorari (p. 1).

On this petition a number of fundamental questions are raised which require determination by this Court: The three divergent opinons rendered in the Emergency Court of Appeals evidence the need for a definitive interpretation of the fundamental purposes of the defense-housing provisions of the Emergency Price Control Act:

(1) whether the Emergency Price Control Act is solely regulatory of prices or whether it protects tenants from eviction in this period of acute and critical housing shortages, and permits them to protest when their eviction is

authorized under circumstances which fail to comply with the requirements as promulgated by the Price Administrator;

(2) whether tenants have any legally recognizable rights under the Rent Regulation for Housing issued by the respondent, which specifically provides that "no tenant shall be removed from any housing accommodations" so long as he continues to pay rent, unless certain contingencies arise.

(3) whether tenants have any legal recourse where they allege that a "cooperative" scheme to oust them from possession was based on initial fraud and, in effect, capitalizes on the acute housing shortage and violates the expressed purpose of the Emergency Price Control Act to "prevent profiteering, hoarding, manipulation, speculation and other destructive practices resulting from abnormal market conditions or scarcity caused by or contributing to the national emergency."

(4) whether an undue burden in administrating the Act would be imposed if tenants were afforded an opportunity for administrative and judicial review.

Petitioners maintain that the Emergency Price Control Act created a right in tenants to maintain possession of defense-area accommodations as well as controlling the prices of such accommodations, since the "concern" of the Act with the cost of a dwelling necessarily implies an equal concern with the right to possess the dwelling. Sec. 2(d) of the Act, in defining the authority of the Price Administrator permits him to regulate "speculative or manipulative practices or renting or leasing practices (*including practices relating to recovery of the possession*) in connection with any defense-area accommodations." (Italics supplied.)

The Department of Justice showed its interest in hard-

ships resulting to tenants from improper evictions under the Act, in *Porter* v. *Lee*, and *Porter* v. *Picken* (14 U. S. Law Week 3373) in which this Court on April 29, 1946, granted certiorari to review the orders of the Circuit Court of Appeals (6th Circuit) which dismissed appeals by the Price Administrator from the orders of the District Court which refused to enjoin state court eviction proceedings. Such injunctions were sought by the Price Administrator on the ground that such evictions would violate the Emergency Price Control Act and the Rent Regulation for Housing issued thereunder. The Department of Justice in asking this Court to define the extent of the Court's authority in these cases, is reported to have warned that if landlords "can deprive tenants of all protection by evicting them before remedial action can be taken in the Federal Courts, they will be greatly encouraged to attempt unlawful evictions," and that "any break in the system of control would result in *grave hardships for tenants illegally evicted*, and an extreme pressure on the rent ceilings".

Possession of tenants as well as rent ceilings is within the ambit of the Emergency Price Control Act.

B. Tenants Are "Subject to" Respondent's Order Authorizing Their Evictions.

The government and the *amici curiae* argue that petitioners are not "subject to" the respondent's order authorizing their evictions since they are not required "to obey" the order and the tenants are neither prohibited from acting nor required to act (pp. 8-12, Respdt's br. pp. 5-9, Landlords' br.). This construction of the words "subject to" is artificial and was specifically disavowed by both the majority (p. 75, Record) and the minority (pp. 82-83, Record) of the Emergency Court of Appeals in their opinions below. It was there pointed out that the Price Administrator himself had extended the right to protest beyond this restrictive

and narrow construction. The direct effect of the Price Administrator's order is that the tenants will be evicted. The intervening state court order that is obtainable as a matter of course following respondent's certificate, does not alter the result of respondent's order. The language of Section 1300.216 of the Revised Procedural Regulation No. 3 is a limitation on the landlord, not the tenant.

This Court, in the recent OPA cases in which certiorari was granted, *Utah Junk Company* v. *Porter, Collins* v. *Porter, Thomas Paper Stock Company* v. *Porter* (14 U. S. Law Week 4305, 4306, 4307) liberalized the availability of protest proceedings under Section 203 (a) of the Act. In *Utah Junk Company* v. *Porter* (14 U. S. Law Week 4305), this Court permitted protest against a superseded price schedule and construed Section 203(a) as amended in favor of reviving a right to protest which had expired through non-user. The Court stated:

> "Congress liberalized the right to challenge the validity of price regulations so extensively as it did, even reviving rights theretofore lapsed, because it felt, as we have seen, that rights were unfairly lost through unfamiliarity with the technical requirements of emergency legislation. Price-fixing is not static; it is a continuing process. The considerations of fairness that led Congress to give relief are the same whether a regulation was revised or remained unchanged. There is not a hint that Congress intended to draw a line so artificial as the one the Administrator would have us draw".

In response to the arguments advanced on behalf of the Administrator that he ought not to be burdened with issues arising under superseded regulations, this Court declared: "The Administrator has the duty of enforcing the Act * * *

It is also suggested that protest proceedings under Section 203(a) as amended are not available to a protestant in petitioner's plight because the validity of the old schedule may be otherwise tested. * * * It surely does not commend itself to good sense to bar a direct protest to the Administrator so easily justified by an unstrained reading of the Act, because leave might be obtained to litigate the issue in a roundabout way, involving violations of a presumptively valid regulation."

This language is applicable in the instant case. Here the Rent Regulation for Housing in New York City Defense-Rental Area, Section 6(a) specifically provided that "no tenant shall be removed from any housing accommodations" so long as rent is paid, unless other eventualities occur. Whatever the precise definition of the tenants' rights under this Regulation, it is clear that the Price Administrator intended to accord to a tenant some possessory right which the tenant should be allowed to protect under the machinery for protest and complaint established under Sections 203(a) and 204(a) of the Emergency Price Control Act. Unless these procedures are available to the tenant, he cannot assert the invalidity of the Price Administrator's order in the state courts, for by Section 204(d) of the Act, such determination is limited to the Emergency Court of Appeals. Not, even a "roundabout way" is available to the tenants.

The duty of the Price Administrator to enforce the Act included the duty to exercise his discretion so that the eviction of tenants would not be "inconsistent with the purposes of the Act and this Regulation and would be likely to result in the circumvention or evasion thereof" (Section 6(b)(2) Rent Regulation for Housing New York City Defense-Rental Area). Whether this Regulation gave tenants a vested property right or merely accorded a governmental privilege, the Price Administrator abused his discretion in failing to recognize this "cooperative" scheme for what it was and in

failing to protect the tenants. The complaint alleges that this plan to evict the tenants was not a true cooperative, that although the owner swore "that said premises were worth not more than $1,000,000," (p. 8, Record), the purchase price of these "cooperative apartments" aggregated about $390,000 over and above a first mortgage of $1,500,000. This attempt to sell apartments for a substantial profit without any underlying equity capitalizes on the acute housing shortage and violates the intention of Congress in passing the Act as expressed in the preamble: "To prevent profiteering, hoarding, manipulation, speculation and other destructive practices resulting from abnormal market conditions or scarcity caused by or contributing to the national emergency".

In failing to recognize this cooperative scheme as evasive of the fundamental purpose of the Act, the Administrator failed to perform his duty to protect the tenants. The Price Administrator in this case entertained the protest of the *landlords* from a ruling made by three of his subordinates in favor of the tenants; he abused his discretion in dismissing the protest of the *tenants* from his ruling which reversed his three subordinates and found in favor of the landlords. Just as the Emergency Court of Appeals had jurisdiction to decide whether the Price Administrator went too far and abused his discretion in favor of a tenant, at the landlord's behest, so it has the correlative duty to consider whether the Administrator did not go far enough in protecting the tenants' interest. The Price Administrator either did not know, or chose to ignore, the fact that this cooperative venture takes advantage of the housing shortage and violates the spirit and letter of the Act.

Petitioners' contention that the interpretation of the Act made by the majority of the Emergency Court of Appeals denies them due process of law under the Fifth Amendment is not based on any "particular form of procedure" which

the tenants desire to follow. The tenants are willing to accept the form of procedure of protest and complaint defined by the Act. Their objection is that they have been given no remedy whatsoever to review the Price Administrator's determination and that if the Act is interpreted as precluding such right, such interpretation renders it *pro tanto* unconstitutional.

The truncated citations from *Collins* v. *Porter* and *Thomas Paper Stock Co.* v. *Porter* (pp. 5-6, Landlords' br.) do not rule to the contrary. The citation from the opinion of the New York Appellate Division in *Werth* v. *Gordon* (pp. 7-8, Landlords' br.) is gratuitous and *obiter dictum* on issues that were neither briefed nor considered in the state court and of which the state court had no jurisdiction. The question of the rights of tenants throughout the nation to protest their evictions which are sought by these cooperative schemes is for this Court to determine. The citation from the opinion of the Emergency Court of Appeals in *Thomas Paper Stock Co.* v. *Bowles*, 148 Fed. 2d 831 (pp. 6-7, Landlords' br.) must be viewed in the light of this Court's statement in *Collins* v. *Porter, supra,* that the ruling in *Thomas Paper Stock Co.* v. *Bowles*, 148 Fed. 2d 831 "we have reversed in *Utah Junk Co.* v. *Porter,* decided this day." (14 U. S. Law Week 4306.)

The respondent notes that when the renewal of the Emergency Price Control Act was under consideration in 1944 and 1945 proposals made for broadening the class of persons who might protest were rejected (p. 12). These proposals were made on behalf of trade associations, such as the National Retailers Association, which were seeking the right of protest on behalf of their members. Chester Bowles, then Price Administrator, stated that trade associations had such right (pp. 1474, 1475, Hearings before Senate committee on Banking and Currency on S. 1764). The rights of tenants to protest their eviction was not considered and rejected at these hearings.

C. Extension of the Right to Protest and the Administration of the Act.

It is urged that to extend to the "millions" of tenants in defense rental areas the right to protest "would be tantamount to asserting that Congress sought to nullify the purposes of the Act." (p. 6, Landlords' br.).

While the policy of administrative efficiency may be invoked to prevent judicial review of orders of the Price Administrator which fixes ceilings at too high a level, the same policy should not operate to strike down the right to judicial review *where possession is involved, particularly in this time of acute housing shortages.* Unless such right is accorded tenants, they are without remedy (Sec. 204(d) Act). The New York courts have held that the order of the Price Administrator may not be attacked collaterally. In *New York City Housing Authority* v. *Rokaw*, 54 N. Y. Supp. 2d 570, the Appellate Term of the New York Supreme Court held that a certificate authorizing a landlord to proceed under local law to evict a tenant is binding upon the state court.

This proceeding by which the tenant seeks to protect his possession granted him by the Regulation is similar to any possessory remedy at common law, such as ejectment. The effect of limiting the determination of respondent's orders to the emergency tribunal established under the Act implies that such tribunal will entertain a protest and complaint which seeks to protect rights arising from the actual operation of the Act. In the absence of hearing in such forum the wording of the Regulation that "no tenant shall be removed from any housing accommodations" would be without meaning.

The respondent contends that to permit tenants administrative and judicial review of the Price Administrator's orders which authorize their eviction "would increase the burden of administering the act manifold." (p. 4, Respdt's br).

The identical argument of increased administrative burdens has been raised frequently to prevent the expansion of the scope of protests. The fears expressed by such enlargement have not been justified. On April 27, 1944, Chester Bowles, then Price Administrator, appeared before the Senate Committee on Banking and Currency and urged that the time to file protests should not be enlarged from the 60 days then permitted under Section 203(a). Mr. Bowle's statement is reminiscent of the present claim made by the respondent. He stated (Hearings before the Senate Committee on Banking and Currency, 78th Cong. 2d Sess. on S. 1764, pages 1474, 1475):

> "There are very substantial reasons for suggesting that protests directed against the authority of a regulation as originally issued should be filed within 60 days of its issuance. It is of great importance from the point of view of industry as well as that of the Office of Price Administration that legal questions with regard to the basic authority of a regulation should be raised and settled as quickly as possible. • • •
>
> "The abolition of all time limitations upon the filing of protests would also create *serious administrative difficulties and would greatly handicap the enforcement of price and rent regulations.* If a protest could be filed at any time, irrespective of changed circumstances, the natural tendency of most violators of regulations would be to file a protest as soon as enforcement proceedings were brought against them. This step would frequently be taken merely for the purpose of delaying enforcement proceedings even though there were no substantial basis for the protest. The result would be not only that the enforcement would be greatly handicapped but also that the administrator would be confronted with frivolous protests which would absorb time and energies that could ill be spared from the consideration

of protests filed in good faith without reference to enforcement proceedings. As indicated more fully below, the inevitable effect would be to delay the disposition of bona fide protests * * *" (Italics supplied.).

Nevertheless, Section 203(a) was amended to permit protests to be filed "at any time." It does not appear that the Price Administrator's burdens were thereby unduly increased.

The respondent answers petitioners' argument that they became parties to the proceedings before the area rent director with a right to the full hearing of protest and complaint as defined by the Act, by stating that petitioners were acting as witnesses, unless they were asserting their own legal rights (p. 14). Petitioners were, in no sense, witnesses in the hearings. They were requested to participate and to submit briefs, as they did, in support of their contentions that certificates authorizing their evictions should not be issued, and over 1000 pages of testimony were taken. Landlords' witnesses cross-examined by tenants' counsel, briefs submitted in behalf of tenants and the tenants were considered as parties to the proceeding until the Price Administrator reversed the rulings of his three subordinates and for the first time held that the tenants had no standing to protest his reversal.

To hold that the tenants have a right to protest after they have participated in hearings which resulted in an ultimate order against them, would not, as the respondent contends (pp. 14-15) jeopardize the effective administration of the Act nor result in the assumption of a new administrative burden of great magnitude, because by the time the protest was filed by the tenants, the hearings had been held and over 1000 pages of testimony had been taken. What remained when petitioners filed their protest with the respondent was for him to determine the issues raised by the protest *on the merits* and to rule as a matter of substantive right whether

the alleged landlords had brought themselves within the terms of the superseded Regulation; and if so, whether they complied with its terms. Instead, the respondent sought refuge in dismissing the tenants' protests as a matter of procedure. This action has effectively blocked any judicial review of his actions by the tenants as parties aggrieved. Having reversed his subordinates' findings and rendered an opinion, the Price Administrator cannot contend that the effective administration of the Act would be jeopardized if he entertained petitioners' protest, denied it on the merits and allowed them to review his determination in the Emergency Court of Appeals.

CONCLUSION.

Tenants should be granted the right to protest under Section 203(a) and the right to file a complaint under Section 204(a) of the Emergency Price Control Act.

ALEXANDER PFEIFFER,
Attorney for Petitioners.

Dated, New York, May 7, 1946.

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No. 80

Supreme Court of the United States

OCTOBER TERM, 1946

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. CLARENCE KASKEL, MORTON H. BARON, ROBERT HERMANN, SAMUEL OGUS, CHARLES MASLOW, GEORGE WILLETT, HARRY WIENER, CHARLES GOLDMAN, DAVID RUDBERG, WILLIAM I. HOHAUSER and SYDNEY MAYBAUM,

Petitioners,

—against—

PAUL A. PORTER, Price Administrator.

PETITIONERS' BRIEF

ALEXANDER PFEIFFER,
Attorney for Petitioners.

ALEXANDER PFEIFFER,
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Of New York City,
Of Counsel.

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The tenants, having been invited by the Office of Price Administration to submit information on the original hearing on the "purchaser's" applications for certificates of eviction, and having answered and participated in the hearing before the Chief Branch Attorney of the New York City Defense-Rental Area to its conclusion, had legal status to protest respondent's order which reversed the recommendations of the Chief Branch Attorney which was confirmed by the Rent Director and the Acting Regional Director. The tenants were persons "subject to" such order under Sec. 203(a) of the Emergency Price Control Act. 27

POINT IV.

Under Sec. 6(a) of the Rent Regulation for Housing in the New York City Defense-Rental Area, promulgated by respondent, tenants are given a vested right to remain in possession of Defense-Area Housing, subject to divestiture by eviction under Sec. 6(b)(2) of said regulation by a purchaser whose cash payments aggregate 20% or more of the purchase price. The tenants are entitled to a judicial examination into the purchaser's failure to comply with the conditions which may operate to divest them of their occupancy, and to protest respondent's order of eviction based on the assumption that such conditions were operative. The extension of such right would not impair the efficient administration of the Act. 29

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No. 80

Supreme Court of the United States

OCTOBER TERM, 1946

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. CLARENCE KASKEL, MORTON H. BARON, ROBERT HERMANN, SAMUEL OGUS, CHARLES MASLOW, GEORGE WILLETT, HARRY WIENER, CHARLES GOLDMAN, DAVID RUDBERG, WILLIAM I. HOHAUSER and SYDNEY MAYBAUM,

Petitioners,

—against—

PAUL A. PORTER, Price Administrator.

PETITIONERS' BRIEF

This appeal presents for review the right of tenants, under Section 203(a) of the Emergency Price Control Act of 1942, as amended, to administrative review of orders of the Price Administrator granting certificates of eviction to purchasers of proprietary leases in apartments which such tenants occupy, and the further right to judicial review under Section 204(a) of said Act. Certiorari was granted on May 13, 1946 (14 U. S. Law Week 3405).

Opinions Below.

The majority and dissenting opinions of the Emergency Court of Appeals are reported in 154 Fed. (2d) 830, and appear in the record herein (R. 63-82).

Jurisdiction.

The judgment of the Emergency Court of Appeals dismissing the complaint on procedural grounds was entered March 13, 1946 (R. 83). Jurisdiction of this Court is invoked under Section 204(d) of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, 50 U. S. C. App. Sec. 92(d), as amended, making applicable Sec. 240 of the Judicial Code, as amended (28 U. S. C. 347).

Statement.[1]

Petitioners are tenants of certain apartments within the New York City Defense-Rental Area owned by the Fifty-Five Corporation which sought to convert twenty-eight of these apartments into cooperatives by offering for sale shares of stock in such owning corporation to certain purchasers, with proprietary leases for a term of years of the apartments involved. The purchase price for such apartments under the proposed ownership sharing plan aggregated approximately $390,000 over and above a first mortgage of $1,500,000 (R. 1, 2, 6).

While the cooperative was being organized, the managing agents of the owning corporation wrote the Chief Attorney for the New York City Defense-Rental Area, of the Office of Price Administration, on March 5, 1945, requesting an interpretation concerning the right of purchasers of such cooperative apartments in 55 Central Park West, to obtain certificates of eviction under the provisions of Subdivision (ii) of Section 6(b)(3)[2] of the Rent Regulations of the Office of Price Administration. This section provides that where a cooperative is organized on or after February 17, 1945, no certificate of eviction shall be issued, unless on

1.—Statement adopted from dissent of Judge McAllister of the Emergency Court of Appeals (R. 70-82).

2.—Added by Am. 17, 10 F. R. 1974, effective Feb. 17, 1945.

such date, stock in the cooperative had been purchased by persons who were then tenants of at least 80% of the apartments in the premises, or unless on such date the cooperative was in the the process of organization and the Administrator finds that substantial hardship would result from the failure to issue such a certificate.

The owners and brokers based their application for an interpretation on the latter portion of the section—that is, on the claim that substantial hardship would result to the owners of the capital stock of the corporation if they were not permitted to proceed with the conversion of some of the apartments into cooperatives under the regulations existing prior to February 17, 1945. Annexed to their letter requesting the interpretation of the right of purchasers of such cooperative apartments to obtain certificates of eviction were certain affidavits and exhibits. On March 23, 1945, an interpretation of hardship, in favor of the owning corporation, was granted by the Office of Price Administration—erroneously, and because of fraudulent misrepresentations, as contended by the tenants—and the representatives of the owning corporation were authorized to proceed with the share-ownership plan under the regulations in existence prior to February 17, 1945. Thereafter, the alleged purchasers of the apartments involved herein applied for certificates of eviction from the Price Administrator, based on a claimed compliance with Section 6(b)(2) of the Rent Regulation for Housing in the City of New York, in effect prior to February 17, 1945, which required that the purchasers of stock for the purpose of carrying out the cooperative ownership plan, must have paid 20% of the equity and the underlying obligation of the corporation, attributable to their apartments at the time of their stock purchase (R. 6, 7).

When the foregoing applications were made for certificates of eviction, the Office of Price Administration, in

accordance with its established practice, served copies of the petition together with notices on the appellants, advising them that they might submit any information they desired with reference to the matter and stating that failure to return the petition with their signed statements would result in the entry of an order upon the basis of the facts available to the Rent Director. Pursuant to this notice, the various tenants filed statements objecting to the granting of certificates of eviction; and the proceeding was thereafter referred to the Chief Branch Attorney of the New York City Defense-Rental Area, who on a hearing took approximately 1,000 pages of testimony. He subsequently recommended denial of the applications for certificates of eviction, giving as reasons that the purchasers did not fulfill the obligation of making payment of 20% of the equity and underlying obligation of the corporation attributable to their apartments, as required by the Housing Regulation; that the letter of interpretation as to hardship issued by the Administrator, and interposed in the proceedings, was based upon misrepresentations and fraudulent statements by the real estate brokers who were acting as managers and agents for the owning corporation; that the entire presentation of the share-ownership plan by the sponsors was permeated with the implication that it was a very substantial financial transaction involving important financial commitments on the part of the sponsors, whereas the actual fact was they had not a penny invested but were operating on an option, in the final exercise of which they hypothecated the very shares of stock which had been sold to purchasers, after payment therefor had been made, for a loan of $40,000 from a New York bank; and that this loan was for the purchase of enabling the sponsors to buy three apartments, none of which they intended to occupy, but for the sole purpose of showing a greater number of sales than were actually consummated (R. 9-15, 33, 34).

The findings and recommendations of the Chief Branch Attorney were sustained by the Area Rent Director of the City of New York, and were thereafter confirmed by the Acting Regional Administrator of the Office of Price Administration for Region II in an opinion in which he stated that the purchasers had not complied with the provisions of Section 6(b)(3) of the Rent Regulation of the Office of Price Administration which required that certificates relating to eviction should only be issued if 80% of the tenants in occupancy at the time of the issuance of the certificates became purchasers of their apartments. The Acting Regional Administrator further denied the claim that the purchasers were entitled to the certificates under the "hardship" provision under the above section, and sustained the findings of fraud and misrepresentation in the procurement of the letter of interpretation. The purchasers then filed a protest (R. 4) which was entertained and thereafter, the action of the Chief Branch Attorney, the Area Rent Director, and the Acting Regional Administrator, was reversed by order of the Price Administrator who granted certificates of eviction to the purchasers (R. 6-9, 34).

Upon entry of the order granting certificates of eviction, the tenants concerned filed a protest with the Administrator setting forth that the purchasers failed to comply with Section 6(b)(2) of the Rent Regulation, and in each individual case had paid in cash less than the proportionate share of the 20% of the stock purchase price required to be paid in good faith under that section; that the letter of interpretation was unjustified, uncalled for, unwarranted, and secured without a basis in fact or in law; that the facts and documents submitted by the managers of the owning corporation seeking the letter of interpretation as to hardship contained misrepresentations and constituted a fraud upon the Administrator; that the owning

corporation was not a cooperative corporation or association, and, therefore, did not come within the provisions of the laws and regulations of the Office of Price Administration as to the eviction of tenants of cooperative apartments; that the sponsors of the cooperative plan acted in bad faith throughout the proceedings; that the property owned by the corporation had no equity over and above its encumbrances; and that the plan for the sale of the shares of stock was fraudulent and infected with bad faith and misrepresentation (R. 9-15).

The foregoing protest was dismissed by the Price Administrator on November 2, 1945, on the ground the tenants had no standing to protest his order granting certificates of eviction, since Section 203(a) of the Emergency Price Control Act of 1942, as amended, provides that only persons "subject to" a regulation or order may file a protest thereto with the Administrator; that the Rent Regulations issued by the Administrator or his representatives prohibit or require action only by landlords; and that, therefore, only such persons, and not tenants, are "subject to" the regulations and orders within the meaning of the Act (R. 8).

The tenants thereupon filed a complaint in the United States Emergency Court of Appeals under Sec. 204(a) of the Emergency Price Control Act. The respondent moved to dismiss the complaint upon the ground that the petitioners were without standing to file it. On March 13, 1946, the Emergency Court of Appeals entered a judgment dismissing the complaint (R. 1-16, 19, 83). Three opinions were rendered:

The majority opinion held that the essential purpose of the Emergency Price Control Act was not to accord to tenants administrative and judicial review of the respondent's action in permitting their landlords to undertake

eviction proceedings against them, that the Act does not give tenants any right to remain in possession of defense area housing accommodations, which they might happen to occupy, and that, therefore, no rights of the tenants were affected by respondent's order authorizing eviction so as to give the tenants standing to protest under Sec. 203(a) of the Act, or to complain under Sec. 204(a) (R. 63-68).

Judge Magruder in concurring "with some hesitation", held that tenants had no standing to bring the regulations or orders of the respondent under judicial review, that the respondent acts in protection of the tenants' interests, that the tenants have no further legal interest in continued possession once a determination has been made by the respondent in favor of the landlord and that further delays under the act would result if the tenants were granted a right to protest respondent's orders, and that to allow tenants the right to file protest and complaint would subject the landlord to too many reviews of respondent's order (R. 68-70).

The dissent of Judge McAllister (R. 70-82) held that the tenants were "subject to" the orders of the respondent granting certificates to the landlord authorizing him to commence eviction proceedings, that one of the purposes of the Emergency Price Control Act is to give tenants a right to remain in possession of the defense-rental area housing accommodations which they might happen to occupy, that both the statement of purposes of the Act and the provisions thereof make it clear that one of the purposes of the Act is to protect the tenants against being forced out of their housing accommodations without good reason, that the Rent Regulation for Housing in the New York City Defense-Rental Area gives the tenants a right to continuing occupancy, that the tenants have a right to challenge any contingency which would deprive them of

possession, that the tenants had, pursuant to invitation from the Office of Price Administration, filed statements objecting to the granting of certificates of eviction on the original hearings and proceeded with such hearings to their conclusion and that the tenants are entitled to file a protest against the respondent's order and to contest the issues, as persons "subject to" the order within the intendment of Sec. 203(a) of the Act.

This Court granted certiorari on May 13, 1946.

Statutes and Regulations Involved.

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, and of the Rent Regulation for Housing in the New York City Defense-Rental Area (8 Fed. Reg. 13914) promulgated by the Price Administrator appear herein.

Specification of Assigned Errors.

The questions which were presented in the petition for the writ of certiorari herein and which will be urged upon the argument of this appeal, are as follows:

1. Whether the fundamental purpose and intent of the defense housing provisions of the Emergency Price Control Act of 1942 and the Rent Regulation for Housing in the New York City Defense-Rental Area (8 Fed. Reg. 13914) is to protect tenants from eviction from defense-rental area housing accommodations, making such tenants "subject to" respondent's order authorizing their eviction, with standing to protest said order under Sec. 203(a) of the Emergency Price Control Act and to complain in the Emergency Court of Appeals under Sec. 204(a) of said Act, or whether the Act is solely regulatory of prices.

The majority of the Emergency Court of Appeals erred in holding that it was not the purpose of the Emergency Price Control Act to give tenants any right to remain in possession of such accommodations and that the tenants therefore are not subject to the Price Administrator's order authorizing their evictions.

2. Whether Sec. 203(a) of the Emergency Price Control Act authorizes the filing of a protest by the tenants with respondent to contest the propriety of an order issued by respondent which authorizes certain alleged purchasers of stock, who obtained proprietary leases of apartments, in defense-area housing accommodations, to pursue their remedy at local law to evict the tenants of such accommodations. The majority of the Emergency Court of Appeals erred in holding that the tenants have no right to protest the Price Administrator's order but that such order is not subject to administrative review.

3. Whether Sec. 204(a) of the Emergency Price Control Act authorizes the filing of a complaint by tenants with the Emergency Court of Appeals to review the action of the respondent in dismissing, on procedural grounds, their protest contesting the validity of respondent's order which authorizes the pursuit of local remedies to evict them. The majority of the Emergency Court of Appeals erred in holding that it had no jurisdiction to review the respondent's dismissal of the tenants' protest and that respondent's orders are not subject to judicial review.

4. Whether the denial to petitioners of a right to file a protest to the order of the respondent (pursuant to Sec. 203(a) of the Emergency Price Control Act), which permitted certain alleged purchasers of stock, who obtained proprietary leases of apartments in defense area housing

accommodations occupied by petitioners, to pursue their local remedy to evict the tenants, and whether the further denial to said tenants of the right to file a complaint in the Emergency Court of Appeals (pursuant to Sec. 204(a) of the Emergency Price Control Act), reviewing the denial of said protest, constitute a deprivation of property without due process of law under the Fifth Amendment. The majority of the Emergency Court of Appeals erred in interpreting the Act in such a way as to deny the tenants a right to the due process of administrative and judicial review.

5. Whether under Sec. 6(a) of the Rent Regulation for Housing in the New York City Defense-Rental Area, which provides that no tenant shall be removed from any housing accommodations so long as he pays rent unless certain contingencies arise, tenants have any legally recognizable rights which permit a judicial examination into the question of compliance by purchasers with the provisions of Sec. 6(b)(2) of said Regulation, as to requisite cash payments where the tenants assert that such Regulation has not been complied with and that the letter of interpretation as to hardship issued by the Administrator and interposed in the proceedings was based on fraud and misrepresentations of the agents of the owning corporation. The majority of the Emergency Court of Appeals erred in holding that the tenants did not have any standing to inquire into the validity and merits of the applications made to divest them from possession and to obtain a judicial examination of the order of the Price Administrator which reversed three of his subordinates and which authorized their evictions.

6. Whether the tenants having been invited by respondent to submit information on the original hearings on purchasers' application for certificates of eviction and

having answered and participated in the hearings before the local Office of Price Administration authorities to their conclusion had legal status to protest respondent's order which reversed the local and regional authorities. The majority of the Emergency Court of Appeals erred in holding that the tenants had no right to protest even though they had participated by invitation of the respondent in the original hearings.

Argument.

The tenants are "subject to" the Price Administrator's order authorizing their evictions and therefore have a right to protest such order under Sec. 203(a) of the Act and to file a complaint under Sec. 204(a) of the Act. There is no practical distinction between the Price Administrator's order authorizing the tenants' eviction and the actual eviction which flows from such order, since under Sec. 204(d) of the Act any defenses to the validity of the Price Administrator's order may not be asserted in the local Courts. The Price Administrator's order acts directly upon the tenants and is the effective cause of their removal. In every realistic sense, the tenants are "subject to" the Price Administrator's order.

The fundamental purpose of the Defense-housing provisions of the Act is to create a right in tenants to maintain possession of defense-area accommodations, as well as to control the price of such accommodations, since the "concern" of the Act with the cost of a dwelling necessarily implies an equal concern with the right to possess the dwelling. Sec. 2(d) of the Act, in defining the authority of the Price Administrator permits him to regulate "speculative or manipulative practices or renting or leasing practices (*including practices relating to recovery of the possession*) in connection with any defense area accommodations." (Italics supplied.)

Furthermore, the Rent Regulation for Housing in the New York City Defense-Rental Area promulgated by the Price Administrator indicates that the tenants have some legally recognizable right to remain in possession of housing unless certain contingencies arise. The Regulation provides that "no tenant shall be removed from any housing accommodations" so long as he continues to pay rent unless certain contingencies arise. The tenants are thus granted a vested right to remain in possession of defense-area housing, subject to defeasance by the occurrence of certain events. This Regulation evidences the existence of a property right in the tenants and implies that the tenants are entitled to the due process of a judicial examination into the circumstances which would act to defeat their occupancy as guaranteed by the Regulation—in this case, a judicial investigation into the facts constituting the alleged compliance by the owners of the cooperative apartments with the provisions of the Regulation. The tenants had been denied the right of administrative review by protest to the Price Administrator, and judicial review by complaint to the Emergency Court of Appeals. The landlords, however, were readily granted the right to protest (R. 4). The denial of a similar right to the tenants cannot be justified.

Unless a review is permitted of the respondent's order relating to eviction, the Price Administrator may act as the sole judge of his own actions, unchallenged and unchallenggable in any Court of law, even though he failed to recognize this cooperative scheme for what it was: a plan to capitalize on the acute housing shortage and to violate the expressed purpose of the Act to "prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcity caused by or contributing to the national emergency."

Although the tenants participated in the original hearings on the purchasers' application for certificates of eviction, at the invitation of the Office of Price Administration, and testimony of approximately 1,000 pages was taken at the hearings, the Price Administrator later dismissed the tenants' protest on the ground that they were not parties "subject to" his order. Having been made parties initially, the tenants continued as parties, with standing to protest the ultimate adverse ruling made by the respondent reversing the findings of his subordinates.

Nor would the extension of the right to protest to tenants whose evictions are ordered unduly increase the burden of administering the Act. The Emergency Court of Appeals was established as a forum for judicial review of the Price Administrator's order and the effect of limiting the determination of the validity of respondent's order to this emergency tribunal implies that it will entertain a protest and complaint which seek to protect rights arising from the actual operation of the Act. Similar arguments of increased administrative burdens which have frequently been raised to prevent the expansion of the scope of protest have proved to be without foundation.

POINT I.

The tenants were "subject to" the respondent's order under the Emergency Price Control Act and the Regulation, with standing to file a protest under Sec. 203(a) of the Act for administrative review, and a complaint under Sec. 204(a) for judicial review, of respondent's order authorizing their eviction.

The tenants' protest was filed pursuant to Sec. 203(a) of the Emergency Price Control Act, which provides that:

> "At any time after the issuance of any regulation or order * * *, any person subject to any provision of such regulation, or order or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision * * *."

The complaint in the Emergency Court of Appeals was filed pursuant to Sec. 204(a) of the Act, which provides that:

> "any person who is aggrieved by the denial or partial denial of his protest may * * * file a complaint with the Emergency Court of Appeals * * * specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part."

Even under the strictest construction of the Act, the tenants are persons "subject to" respondent's order authorizing their eviction. Both the majority and minority opinions of the Emergency Court of Appeals in the instant case rejected the Administrator's contention that a person is subject to a regulation or order within the meaning of Sec. 203(a) only if the regulation or order prohibits or requires action by him. The right to file a protest against a regulation or order of the Price Administrator was held not to be restricted to those whose action was prohibited or required, since the Price Administrator himself, in Sec. 24 of the Revised Procedural Regulation No. 1, provided an exception to his interpretation that a person is "subject to" the provision of a maximum price regulation only if such provision prohibits or requires action by him. This exception was provided for the benefit of the producer of an agricultural commodity who may complain

that a particular price regulation violates Sec. 3 of the Emergency Price Control Act, or the Stabilization Act, which are designed to protect such producers against the depressing effect upon their prices, of the processor's ceiling, which exception is found in the following portions of the Revised Procedural Regulation (Revised Procedural Regulation No. 1, Sec. 1300.24; 7 Fed. Reg. 8961):

> "That a producer of an agricultural commodity shall be considered to be subject to a maximum price regulation for the purpose of asserting any right created by Sec. 3(c) of the Emergency Price Control Act of 1942 * * * for the benefit of producers of such an agricultural commodity. Any protest filed by a person not subject to the provision protested, or otherwise not in accordance with this Revised Procedural Regulation, may be dismissed by the Administrator."

This proviso clearly extends the concept of the phrase "subject to" and demonstrates a departure by the Administrator from a consistent and uniform construction that a person is not subject to, and, therefore, cannot protest, a regulation, unless, by the terms of such regulation, he is prohibited from taking, or required to take, some action.

Furthermore, the Emergency Court of Appeals in *Illinois Packing Co.* v. *Snyder*, 151 Fed. (2d) 337 (ECA 1945), held that a person who contended that he was arbitrarily and capriciously discriminated against in a regulation providing for the payment of subsidies, was a person "subject to" the regulation within the meaning of Sec. 203(a). In passing upon the issue thus tendered, the Emergency Court of Appeals said:

> "In *Buka Coal Co.* v. *Brown*, 133 F. (2d) 949 (E. C. A., 1943), we accepted the Price Administrator's inter-

pretation of this provision of the Act to the effect that a person is 'subject to' a provision of the maximum price regulation 'only if such provision prohibits or requires action by him.' While this interpretation may be appropriate, so far as concerns, the standing of a person to protest a price regulation, it is clearly not an appropriate criterion for determining the standing of a person to protest the kind of regulation now before us, a regulation setting up a scheme of compensatory subsidy payments under defined terms and conditions. If anybody could be 'subject to' a provision of the subsidy regulation, complainant certainly would meet this requirement, since it *claims to be excluded from the subsidy by a discriminatory and unlawful condition inserted in the subsidy regulation* by Amendment No. 2." (Italics supplied.)

Since in one case the Emergency Court of Appeals declared a person "subject to" a regulation because he had been excluded from its benefits by a discriminatory condition, and in another, the Administrator, pursuant to the broad discretion conferred upon him by the Statute, provided by regulation that a party was "subject to" the regulation, when otherwise he would have had no claim or standing to file a protest, it is apparent that the tenants likewise are "subject to" the Administrator's certificate authorizing their evictions.

This Court, in the recent OPA cases in which certiorari was granted, *Utah Junk Company* v. *Porter*, *Collins* v. *Porter*, *Thomas Paper Stock Company* v. *Porter* (14 U. S. Law Week 4305, 4306, 4307) liberalized the availability of protest proceedings under Section 203(a) of the Act. In *Utah Junk Company* v. *Porter* (14 U. S. Law Week 4305), this Court permitted protest against a superseded price schedule and construed Section 203(a) as amended

in favor of reviving a right to protest which had expired through non-user. The Court stated:

> "'Congress liberalized the right to challenge the validity of price regulation so extensively as it did, even reviving rights theretofore lapsed, because it felt, as we have seen, that rights were unfairly lost through unfamiliarity with the technical requirements of emergency legislation. Price-fixing is not static; it is a continuing process. The considerations of fairness that led Congress to give relief are the same whether a regulation was revised or remained unchanged. There is not a hint that Congress intended to draw a line so artificial as the one the Administrator would have us draw".

In response to the arguments advanced on behalf of the Administrator that he ought not to be burdened with issues arising under superseded regulations, this Court declared: "The Administrator has the duty of enforcing the Act * * * It is also suggested that protest proceedings under Section 203(a) as amended are not available to a protestant in petitioner's plight because the validity of the old schedule may be otherwise tested * * * It surely does not commend itself to good sense to bar a direct protest to the Administrator so easily justified by an unstrained reading of the Act, because leave might be obtained to litigate the issue in a roundabout way, involving violations of a presumptively valid regulation."

The tenants were "subject to" the Price Administrator's order, since there may be a distinction, but no pragmatic difference, between the authorization of the Price Administrator to evict tenants and the eviction proceedings themselves under local law, the necessary result of which are final orders directing the removal of tenants from

their homes. The equivalence of permission to evict and the subsequent eviction proceedings is underscored by the fact that the tenants had no defense which could be asserted to the summary proceedings at local law, for by Section 204(d) of the Act only the Emergency Court of Appeals has jurisdiction to consider the validity of an order of the Price Administrator. The issues of fraud in the procurement of the letter of interpretation of hardship (which formed the basis for the issuance of the certificates relating to eviction), of compliance by the purchaser with the prerequisites of Section 6(b)(2) of the Regulation as to cash payments, of the compliance of the cooperative ownership plan with the requirements of Sec. 85 of the New York Cooperative Corporation Law could not be decided in summary proceedings in the Municipal Court of the City of New York.

The New York courts have held that the order of the Price Administrator may not be attacked collaterally. In *New York City Housing Authority* v. *Rokaw*, 54 N. Y. Supp. (2d) 570, the Appellate Term of the New York Supreme Court held that a certificate authorizing a landlord to proceed under local law to evict a tenant is binding upon the state court.

The direct effect of the Price Administrator's order is that the tenants will be evicted. The intervening state court order that is obtainable as a matter of course following respondent's certificate, does not alter the result of respondent's order. The language of Section 1300.215 of Revised Procedural Regulation No. 3 providing that a *landlord* is "subject to a provision of a maximum rent regulation or of an order, only if such provision prohibits or requires action by him" is a limitation on the landlord, not the tenant.

The provisions of the Emergency Price Control Act, which are to be accorded a liberal construction to effectuate

their highly remedial purposes (*Automatic Fire Alarm Co.* v. *Bowles*, 143 Fed. (2d) 602 (ECA 1944) were given a broad interpretation in *Yakus* v. *United States*, 321 U. S. 414, where this Court, speaking through the late Chief Justice Stone, liberally construed the provisions of the Emergency Price Control Act for judicial review of the Administrator's orders as follows (at p. 433):

> "In addition, the present Act seeks further to avoid that confusion by restricting judicial review of the Administrator's determination to a single court. Such a procedure, so long as it affords *to those affected* a reasonable opportunity to be heard and present evidence does not offend against due process. *Bradley* v. *Richmond*, 227 U. S. 477; *First National Bank* v. *Weld County*, 264 U. S. 450; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337." (Italics supplied.)

The use of the expression, "those affected", by the late Chief Justice shows clearly the intent of the Court to construe the judicial review provisions of the Emergency Price Control Act as all inclusive, rather than restricted to a particular class of persons. In defining the power of the Emergency Court of Appeals to review actions of the Administrator, Mr. Justice Stone continued (at p. 437):

> "The Emergency Court has power to review all questions of law including the question where the Administrator's determination is supported by evidence, and any question of the denial of due process for any procedural error appropriately raised in the course of the proceedings."

It therefore appears that although Congress was impelled by the pressure of the emergency situation to authorize summary action by the respondent in the first instance, this Court in construing this Act made it clear that the action of the Administrator would always be subject to later judicial review. (*Yakus* v. *United States*, (1943), 321 U. S. 414, 442.)

The legislative history of the Emergency Price Control Act of 1942, as amended, shows the clear intent of Congress to permit any one affected by an order of the Price Administrator to appeal therefrom to the Emergency Court of Appeals.

The Congressional Record (Vol. 88) defined this policy at page 663 as follows:

> "*Administration and Review*. Both the House bill and the Senate amendment vested the administration of the bill in a single Price Administrator * * * the Senate amendment provided (2) * * * direct judicial review of regulations and orders of the Administrator by an Emergency Court of Appeals composed of federal judges designated for service at such court by the Chief Justice of the United States."

The Record continues as follows, pages 663, 664:

> "The Senate amendment also provided that a statement of considerations must accompany every regulation or order establishing a maximum price, *that every such regulation or order should be subject to protest proceedings*, that if any protest should be denied the Administrator must advise the protestant of the grounds upon which such denial was based * * *." (Italics supplied.)

The Conference agreement adopted the provisions of the Senate amendment (p. 664).

Congressman Henry V. Steagall, speaking in behalf of the Conference Report stated at pages 664, 665:

> "Another provision that has been controversial throughout the entire consideration of the bill hinges on the question of the authority to be established for the administration of the law. The House bill provided for the Administration of the law by a single Administrator whose office was created by the bill. There was included in the House bill, as reported by the Committee on Banking and Currency, a provision establishing a special Appellate Court of not less than three circuit or district court judges, named by the Chief Justice of the United States, with the right to add additional members whenever required, the Court to be permitted to sit in divisions when necessary. *The provision also gave anybody dissatisfied with an order, ceiling or regulation of the Administrator the right to appear and protest the action of the Administrator.* The Administrator was required to take action on such protest within 30 days. Thirty days would be required in which an appeal might be made to the Emergency Court of Appeals established under the bill, with the duty of the Court to review the decision of the Administrator in establishing ceilings or other regulations under the bill.
>
> "The Conference Report follows substantially the bill reported by the House Committee on Banking and Currency. That is the plan embodied in the Conference Report." (Italics supplied.)

During the course of the debate in the House on the Conference Report, the following statement was made (at p. 687):

"* * * Under the provisions of the Conference report, when the Price Administrator after all this investigation which he makes fixes a price, *anyone who is aggrieved by reason of that decision has the right to enter a protest. He may file a protest and within 30 days he has a right to have a decision upon his protest. If that is denied, then he has the right to appeal to a court,* not an administrative board but an independent court set up and established under the provisions of the Conference report, the members of which court are appointed, if you please, by the Chief Justice of the United States Supreme Court. That court has the right and it is the duty to review the proceedings under which the price ceiling was fixed by the Administrator. If the Administrator does not follow the law which this Congress lays down, he is reversed and may I say that we are determining that policy. It is a legislative policy * * *. The Congress lays down the standards and establishes the procedure and tells and directs the Administrator what he shall do." (Italics supplied.)

A motion to recommit the Conference Report to the Committee of Conference was defeated (Volume 88 Congressional Record, p. 688) and the Conference Report was confirmed by the House (p. 688) and by the Senate (p. 725). No extensive discussion concerning the Administration and Review provisions of the Conference Report appeared in the report of the debate thereon in the Senate.

POINT II.

One of the fundamental purposes of the defense housing provisions of the Emergency Price Control Act and the regulation was to permit continued occupancy of defense housing accommodations of which tenants were in possession, and not merely to regulate the price of such accommodations. The tenants, therefore, were "aggrieved" by the dismissal of their protest, with standing to file a complaint under Sec. 204(a) of the Emergency Price Control Act, and were "subject to" respondent's order, with standing to file a protest under Sec. 203(a) thereof.

The basic issue with which the majority and minority of the Court below were concerned related to the fundamental purpose of the Emergency Price Control Act and the regulations promulgated pursuant thereto. The majority held that "an examination of the Emergency Price Control Act discloses that it was not one of its purposes to give to tenants any right to remain in possession of the defense-area housing accommodations which they might happen to occupy * * * its sole purpose * * * was to control the amount of rents of such accommodations and to prevent speculative, unwarranted and abnormal increases therein." (R. 66).

The minority specifically disagreed with this construction and stated: "Contrary to the conclusion entertained in the majority opinion, I am of the view that one of the purposes of the Emergency Price Control was to give to tenants a right to remain in possession of the defense-rental area housing accommodations which they might happen to occupy, except for good and sufficient reasons to the contrary * * * " (R. 77).

The consequence of the majority viewpoint is that tenants having no right to occupancy, are not parties "subject to" respondent's order authorizing their eviction. The result of the minority opinion constitutes the tenants as subject parties, since their right to continue in occupancy is affected by the respondent's order.

Both the wording of the Act and the Regulation show the clear intention of Congress to protect tenants, in the extremely critical housing shortage, in their right to continued occupancy of defense-housing. It is untenable to differentiate between the regulation of reasonable rental of defense housing accommodations and the right to continuing occupancy thereof. One is a function of the other, and Congress surely had in mind the continued possession of premises in defense housing areas as well as the payment of reasonable rental therefor.

In the Statement of Purposes of the Price Control Act (Sec. 1(a)), it is declared that "the purposes of this Act are to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; * * * to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living."

In Sec. 2(d) of the Act, it is provided:

> "Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit * * * speculative or manip-

ulative practices or renting or leasing practices (*including practices relating to recovery of the possession*) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or likely to result in * * * rent increases * * * inconsistent with the purposes of this Act." (Italics supplied.)

By the foregoing section, the Administrator is empowered to issue regulations to effectuate the purposes of the Act, by prohibiting or regulating speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of possession) in connection with any defense-rental area housing accommodations, *which in his judgment are likely to result in rent increases,* inconsistent with the purposes of the Act.

The authority of the Administrator—*which is specifically referred to in the above section of the Act*—to regulate practices relating to the recovery of the possession, may be incident to his control over improper rent increases. But his power to issue regulations with regard to rents and tenancies is not restricted to preventing improper rent increases.

In Sec. 2(g), the Administrator is granted broad general powers to issue regulations to prevent the circumvention or evasion of the Act. Since the purpose of the Act, as stated therein, is to eliminate and prevent manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency, and to protect persons with relatively fixed and limited incomes from undue impairment of their standard of living, which circumvent or evade the Act, the issuance of any regulations for the purpose of protecting such persons from impairment of their standard of living, or to prevent such manipulations and disruptive practices, is authorized by the Statute and is within the intended ambit of its operation.

Whether the purpose of the Act is to restrict the right of a landlord to evict a tenant from his quarters—as well as to establish maximum rents that may be exacted—may be ascertained from an examination of the following provisions of the Statute: In Sec. 2(b) of the Act, it is provided that the Administrator may adopt regulations fixing the rent to be charged; and in Sec. 2(d), above quoted, the Administrator may restrict the owner's right to terminate the tenant's occupancy, if, in his judgment, it is likely to result in rent increases. In Sec. 2(g) of the Act, it is provided that regulations issued under the Act shall contain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof, and Secs. 4(a) and 4(b) provide that it shall be unlawful to violate the regulation fixing rents or to remove or attempt to remove the tenant, or to refuse to renew the lease, because such tenant or occupant has taken, or proposes to take action as required by the Act or regulation or order or requirement thereunder.

From the foregoing, it would appear that one of the purposes of the Statute is to protect the tenants against being forced out of their housing accommodations, without good reason.

In *Snyder* v. *Reshink*, 131 Conn. 252, 38 A. (2d) 803 the Supreme Court of Errors of Connecticut, in discussing the purposes of the Emergency Price Control Act, observed:

> "The context of the statute in so far as applicable to rents leaves no doubt that a primary purpose is to protect the tenant in defense rental areas, not only against the exaction of excessive rents but also against being forced, without good and sufficient reason, by the owner to move out and seek quarters elsewhere. Looking to the accomplishment of these ends, the Act provides for the adoption by the Administrator of

regulations fixing the rent to be charged and also restricting the owner's right to terminate the tenant's occupancy."

POINT III.

The tenants, having been invited by the Office of Price Administration to submit information on the original hearing on the "purchaser's" applications for Certificates of Eviction, and having answered and participated in the hearing before the Chief Branch Attorney of the New York City Defense-Rental Area to its conclusion, had legal status to protest respondent's order which reversed the recommendations of the Chief Branch Attorney which was confirmed by the Rent Director and the Acting Regional Director. The tenants were persons "subject to" such order under Sec. 203(a) of the Emergency Price Control Act.

When the "purchasers" of stock in the owning corporation filed petitions for certificates of eviction, pursuant to Sec. 6(b) (2) of the Rent Regulation for Housing in the New York City Defense-Rental Area, authorizing them to proceed under the local law to evict the tenants from their apartments, the Office of Price Administration, in accordance with established practice, served copies of the petition, together with notices on all the tenants concerned, advising them that they might submit any information they desired with reference to the matter, and stating that failure to return the petition with their signed statements would result in the entry of an order upon the basis of the facts available to the Rent Director (R. 67, 70, 72). Pursuant to this notice, the tenants filed statements objecting to the granting of certificates of eviction. The proceeding was thereafter referred to the Chief Branch Attorney of the

New York City Defense Rental Area, who, on a hearing took approximately 1,000 pages of testimony. The tenants participated in the hearings as parties, they were requested to, and did, submit briefs in support of their position, their counsel cross-examined the landlords' witnesses and the tenants were considered parties in every way. The Chief Branch Attorney's recommendation that the application for certificates of eviction be denied was sustained by the Area Rent Director of the City of New York, and thereafter confirmed by the Acting Regional Administrator of the Office of Price Administration for Region II (R. 7, 8).

The invitation to the tenants to participate in the hearings was a practical construction of their rights by the Office of Price Administration, and constituted them parties "subject to" the Administrator's orders authorizing their eviction. The only method that the tenants had under the Act to review the Administrator's order, which reversed recommendations made as the result of a hearing in which petitioners were invited to, and did, participate, was to file a protest to the Administrator's order. Respondent could not invite the tenants to participate in hearings and then deprive them of any further right of administrative or judicial review once he had issued an adverse order.

The majority of the Court below held that the invitation by the Administrator to the tenants "was doubtless wise administrative procedure which enabled the Administrator to become fully informed with respect to all the facts which might have any bearing upon the questions raised by the petitions, but it did not, as the complainants urged, make the tenants parties to the proceedings * * *. No showing which any one of the tenants might have made with respect to his own situation and necessities could have had the slightest bearing upon the Administrator's

determination of the question raised by the landlord's petitions" (R. 67). However, the showing which the tenants made concerning the fraud and misrepresentation in procuring the original letter of interpretation and the failure to comply with the Regulation as to cash payments, had every bearing on the determination by the Chief Branch Attorney, and his superiors, on the validity of granting the "purchasers'" application. It was not the showing as to the tenants' "own situation and necessity", but the attack upon the validity of the application to oust them that was of importance. The tenants had and have a very real interest in the denial of the applications for certificates authorizing their eviction.

POINT IV.

Under Sec. 6(a) of the Rent Regulation for Housing in the New York City Defense-Rental Area, promulgated by respondent, tenants are given a vested right to remain in possession of Defense-Area Housing, subject to divestiture by eviction under Sec. 6(b)(2) of said regulation by a purchaser whose cash payments aggregate 20% or more of the purchase price. The tenants are entitled to a judicial examination into the purchasers' failure to comply with the conditions which may operate to divest them of their occupancy, and to protest respondent's order of eviction based on the assumption that such conditions were operative. To deny appellants such right is a deprivation of property without due process of law. The extension of such right would not impair the efficient administration of the Act.

Sec. 6(a) of the Rent Regulation for Housing in New York City Defense-Rental Area, promulgated by respondent, provides:

"*Removal of Tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, *no tenant shall be removed from any housing accommodations,* by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary thereto, *unless*:" (Italics supplied.)

(There follow certain conditions having to do with the tenant's refusal to renew the lease, refusal of access to the landlord, violation of obligation of tenancy or committing nuisance, demolition, or alteration by landlord in accordance with law, and occupancy by landlord under a right to buy or a right to possession acquired prior to November 1, 1943.)

Section 6(b)(2) of the Regulation provides, among other matter, the following:

"*Occupancy by purchaser. Removal or eviction of a tenant of the vendor,* for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after November 1, 1943 *is inconsistent with the purposes of the Act and this regulation and would be likely to result in the circumvention or evasion thereof,* unless (i) the payment or payments of principal made by the purchaser, excluding any payments made from funds borrowed for the purpose of making

such principal payments, aggregate 20% or more of the purchase price, and (ii) a period of three months has elapsed after the issuance of a certificate by the Administrator as hereinafter provided. For the purpose of this paragraph (b) (2), the payments or principal may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in the event the Administrator denies a petition for a certificate. If the Administrator finds that the required payments of principal have been made, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law at the expiration of three months after the date of issuance of such certificate." (Italics supplied.)

The Regulation clearly and unambiguously defines the nature of tenants' interest in and to the continued occupancy of the defense-housing accommodations of which they are in possession: This interest is a fully vested right to possession unless and until certain contingencies arise. Sec. 6(a) of the Regulation states that so long as rent is paid, "no tenant shall be removed from any housing accommodations by action to evict or to recover possession * * * *unless*" certain conditions exist which may act to divest him of possession. The tenants contend that it is the intention of the Act and the Regulation to give them the right to challenge these conditions which serve to divest and defeat their continuing occupancy granted by the Regulation, by filing a protest under Sec. 203(a) of the Emergency Price Control Act.

In order to deprive the tenants of their occupancy, a purchaser must comply strictly with the various provisions

of Sec. 6(b)(2) of the Regulation: The payments of principal made by the purchaser, excluding any payments made from funds borrowed for the purpose of making such principal payments, must aggregate 20% or more of the purchase price (assuming that the pre-February 17, 1945 Regulation applied) and the removal or eviction of a tenant must not be "inconsistent with the purposes of the Act and this Regulation" and must not be likely "to result in the circumvention or evasion thereof". The petitioners contend that the "purchasers" in each individual case paid in cash less than the proportionate share of the 20% of the stock purchase price required to be paid in good faith under the Regulation; that the so-called purchasers did not, in fact and in law, become owners of the apartments; that the representations upon which the initial certificate of hardship was based are fraudulent; that the whole plan by which the original owners procured the interpretation of hardship, upon which the rights of the so-called purchasers to the benefit of the pre-February 17, 1945 Regulation depend, was a sham; and that the proceedings in which the order was secured from the respondent by virtue of which it is sought to evict them are permeated with fraud and constituted a scheme to obtain a large sum of money as the result of the sale of the apartments in the property involved, in which there was no equity over and above the underlying encumbrances and that the very shares of stock of the owning corporation which were agreed to be sold to the "purchasers" were hypothecated as collateral security for a loan which was used by one of the owners of the stock of the owning corporation to acquire proprietary leases and that the entire course of the proceedings resulting in the order permitting the tenants' eviction "was and is unfair, unreasonable, arbitrary, inequitable and capricious and not in accordance with law." (R. 15).

Respondent having moved to dismiss the complaint, these allegations of the complaint must be deemed to be true. The tenants contend that they have a right to a judicial review of the propriety of the order which operated to divest them of their continued occupancy under Sec. 6(a) of the Regulation since they claim that such contingencies did not become validly operative, that an order based upon the supposition that they had become operative was improvidently issued and that they are entitled in defending their possession of the apartments, to challenge such order on the ground that it was procured by fraud and misrepresentation and results in a deprivation of their rights. This claim is not only supported by the underlying purpose of the Act and the Regulation, but is based on the repeatedly recognized constitutional right under the Fifth Amendment that no person shall be deprived of property without due process of law. Due process in the instant case surely should permit tenants, who are the objects of certificates of eviction, to be accorded a reasonable judicial review of their objections to the propriety of the grounds upon which such certificates are bottomed. The tenants have legal status as persons "subject to" an order permitting their eviction to file a protest to such order and, having been granted the right of continued occupancy by the Act and Regulation, subject to stated exceptions, to contest the validity and operability of such exceptions by which it is sought to deprive them of their rights of occupancy.

In *Bowles* v. *Willingham* (1945), 421 U. S. 503, this Court in passing on the constitutionality of the Emergency Price Control Act upheld the reasonableness of the procedure whereby no hearings were permitted to landlords before the effectuation of maximum rent orders. The Court, through Mr. Justice Douglas, at page 521, however, stated:

> "To require hearings for thousands of landlords before any rent control order could be made effective might

have diverted the program of price control * * *. But *Where Congress has provided for judicial review after the regulations or orders have been made effective, it has done all that due process under the War emergency requires.*" (Italics supplied.)

The denial by the majority of the Emergency Court of Appeals of any right in the tenants to question the Price Administrator's orders, in the face of contentions that such order was predicated on a letter of interpretation which was fraudulent and contrary to the express provisions of the Regulation pomulgated by the Administrator, results in depriving the tenants of property without due process of law.

To hold as the majority of the Court below did that the tenants have no more than a "regulatory", as distinct from a property, or statutory, right to possession (R. 67) is to contravene not only the express purpose of the Act and the Regulation but to repose in the Price Administrator an unbridled discretion insofar as the rights of the tenants are concerned, foreclosing the tenants from any right to appeal from the Administrator's actions. To accede to this contention would be to hold that the action of the Price Administrator, which was challenged—first in the protest to the Price Administrator and reiterated in the complaint in the Emergency Court of Appeals as "unfair, unreasonable, arbitrary, inequitable and capricious and not in accordance with the law" (R. 15)—is final and that the Price Administrator, without hearing, had the power to reverse the report and findings of the Chief Branch Attorney, the Area Rent Director and the Regional Administrator, without subjecting his own decision to judicial review by any court of law. Such holding would place the Price Administrator in the position of unchallengable

power to cause the eviction of tenants, capriciously, arbitrarily and inequitably (as is claimed in this case) at a time when an acute housing shortage prevails throughout the country, without permitting such persons sought to be dispossessed to appeal from such arbitrary exercise of authority.

It could never have been the intention of Congress to constitute the respondent the sole judge of his own actions.

The duty of the Price Administrator to enforce the Act included the duty to exercise his discretion so that the eviction of tenants would not be "inconsistent with the purposes of the Act and this Regulation and would be likely to result in the circumvention or evasion thereof" (Section 6(b)(2) Rent Regulation for Housing New York City Defense-Rental Area). Whether this Regulation gave tenants a vested property right or merely accorded a governmental privilege, the Price Administrator abused his discretion in failing to recognize this "cooperative" scheme for what it was and in failing to protect the tenants. The complaint alleges that this plan to evict the tenants was not a true cooperative, that although the owner swore "that said premises were worth not more than $1,000,000," (R. 6), the purchase price of these "cooperative apartments" aggregated about $390,000 over and above a first mortgage of $1,500,000. This attempt to sell apartments for a substantial profit without any underlying equity capitalizes on the acute housing shortage and violates the intention of Congress in passing the Act as expressed in the preamble: "To prevent profiteering, hoarding, manipulation, speculation and other disruptive practices resulting from abnormal market conditions or scarcity caused by or contributing to the national emergency".

In failing to recognize this cooperative scheme as evasive of the fundamental purpose of the Act, the Admin-

istrator failed to perform his duty to protect the tenants. The Price Administrator in this case entertained the protest of the *landlords* from a ruling made by three of his subordinates in favor of the tenants; he abused his discretion in dismissing the protest of the *tenants* from his ruling which reversed his three subordinates and found in favor of the landlords. Just as the Emergency Court of Appeals had jurisdiction to decide whether the Price Administrator went too far and abused his discretion in favor of a tenant, at the landlord's behest, so it has the correlative duty to consider whether the Administrator did not go far enough in protecting the tenants' interest. The Price Administrator either did not know, or chose to ignore, the fact that this cooperative venture takes advantage of the housing shortage and violates the spirit and letter of the Act.

Petitioners' contention that the interpretation of the Act made by the majority of the Emergency Court of Appeals denies them due process of law under the Fifth Amendment, is not based on any "particular form of procedure" which the tenants desire to follow. The tenants are willing to accept the form of procedure of protest and complaint defined by the Act. Their objection is that they have been given no remedy whatsoever to review the Price Administrator's determination and that if the Act is interpreted as precluding such right, such interpretation renders it *pro tanto* unconstitutional.

In the concurring opinion rendered in the Court below, it was said that the consequence of opening the door to judicial review would be to subject the landlord's right to recover possession to further delay during the pendency of protest proceedings instituted by the tenant followed by review proceedings in the Emergency Court of Appeals.

While the policy of administrative efficiency may be invoked to prevent judicial review of orders of the Price

Administrator which fix ceilings at too high a level, the same policy should not operate to strike down the right to judicial review *where possession is involved, particularly in this time of acute housing shortages.* Unless such right is accorded tenants, they are without remedy (Sec. 204(d) Act).

The identical argument of increased administrative burdens has been raised frequently to prevent the expansion of the scope of protests. The fears expressed by such enlargement have not been justified. On April 27, 1944, Chester Bowles, then Price Administrator, appeared before the Senate Committee on Banking and Currency and urged that the time to file protests should not be enlarged from the 60 days then permitted under Section 203(a). Mr. Bowles' statement is reminiscent of the present claim made by the respondent. He states (Hearings before the Senate Committee on Banking and Currency, 78th Cong. 2d Sess. on S. 1764, pages 1474, 1475):

> "There are very substantial reasons for suggesting that protests directed against the authority of a regulation as originally issued should be filed within 60 days of its issuance. It is of great importance from the point of view of industry as well as that of the Office of Price Administration that legal questions with regard to the basic authority of a regulation should be raised and settled as quickly as possible. * * *
>
> "The abolition of all time limitations upon the filing of protests would also create *serious administrative difficulties and would greatly handicap the enforcement of price and rent regulations.* If a protest could be filed at any time, irrespective of changed circumstances, the natural tendency of most violators of regulations would be to file a protest as soon as

enforcement proceedings were brought against them. This step would frequently be taken merely for the purpose of delaying enforcement proceedings even though there were no substantial basis for the protest. The result would be not only that the enforcement would be greatly handicapped but also that the administrator would be confronted with frivolous protests which would absorb time and energies that could ill be spared from the consideration of protests filed in good faith without reference to enforcement proceedings. As indicated more fully below, the inevitable effect would be to delay the disposition of bona fide protests * * *." (Italics supplied.)

Nevertheless, Section 203(a) was amended to permit protests to be filed "at any time." It does not appear that the Price Administrator's burdens were thereby unduly increased.

If a choice must be made between the "delay" of a court review of an eviction order, which is attacked as arbitrary and capricious, and the rights of the tenants to a full and fair hearing of their complaints, the choice should be exercised in favor of judicial review. Otherwise, under the guise of the argument of "delay", administrative injustice would be sanctioned. Any legal proceeding can be characterized as delay or "red tape", as the concurring opinion has it (R. 69). Legal proceedings rather should be regarded as safeguards to rights, which are not lightly to be denied. The persistent attempt in this case of the Price Administrator to shield his order of eviction from further administrative and judicial scrutiny, made after the Chief Branch Attorney, the Rent Director and the Acting Regional Director had found misrepresentations and failure of compliance with existing regulations, underscores the necessity for permitting tenants to protest under Sec. 203(a), and to review any denial of such protest under Sec. 204(a) of the Act.

To hold that the tenants have a right to protest after they have participated in hearings which resulted in an ultimate order against them, would not jeopardize the effective administration of the Act nor result in the assumption of a new administrative burden of great magnitude, because by the time the protest was filed by the tenants, the hearings had been held and over 1,000 pages of testimony had been taken. What remained when the tenants filed their protest with the respondent was for him to determine the issues raised by the protest *on the merits* and to rule as a matter of substantive right whether the alleged landlords had brought themselves within the terms of the superseded Regulation, and if so, whether they complied with its terms. Instead, the respondent sought refuge in dismissing the tenants' protests as a matter of procedure. This action has effectively blocked any judicial review of his actions by the tenants as parties aggrieved. Having reversed his subordinates' findings and rendered an opinion, the Price Administrator cannot contend that the effective administration of the Act would be jeopardized if he entertained the tenants' protest, denied it on the merits, and allowed them to review his determination in the Emergency Court of Appeals.

CONCLUSION.

The judgment of the United States Emergency Court of Appeals should be reversed and the respondent directed to determine the tenants' protest on the merits.

Respectfully submitted,

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In The

Supreme Court of the United States

October Term, 1946

No. 80

Jack Parker, et al.,

Petitioners,

—against—

Paul A. Porter, Price Administrator.

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF.

Respondent predicates its argument upon the premise that a tenant is accorded no private right to the possession of housing accommodations either under the Act or the Rent Regulation. Respondent concedes (p. 14, brief) that "if petitioners do have a private right to possession of which they have been deprived by the Administrator, respondent would agree that the phrase 'subject to' in Section 203(a) of the Act should be construed to give petitioners the right to protest and to judicial review in this case."

The issues are thus squarely presented whether a tenant within the meaning of Section 203(a) is "subject to" the respondent's order which necessarily results in his eviction and whether a tenant does have a possessory right which he may protect by the machinery of protest and complaint.

The distinction sought to be drawn between the "public interest" which the respondent is supposed to protect "against action of landlords tending to undermine the rent stabilization program" and private rights of tenants is unrealistic. The Emergency Price Control Act is instinct with the intent to protect tenants from the inequities attendant upon the housing shortage. To distinguish be-

tween the public sought to be protected and the tenants who constitute such public is meaningless.

The guarantee of Section 6 of the Rent Regulation that "no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise" is attacked as being a conditional, but not an absolute restriction against evictions (p. 10, respondent's brief). The fact that a property right is conditional does not derogate from its status as a property right. It is a familiar doctrine in the law of estates that an interest may be vested subject to divestiture, and yet possess the characteristics of a vested interest protected by the law. Here, until certain conditions have been met, the tenant may not be removed from possession. The petitioners maintain that they have been accorded a right --whatever its legal denomination—which entitles them to be heard when events are claimed to occur which would deprive them of this right. Private rights in private dwellings have thus been granted to the tenants during the existence of the national housing crisis.

It does not require a reading of authorities to understand that the issue in housing is houses as well as their price. The inability to construct houses because of the diversion of materials for war purpose has created a crisis of magnitude which faces both the civilians who stayed at home and the veterans who expected at least to find a place to live. Unless occupancy as well as rents is protected the extremely difficult conditions facing the entire nation of lessees would become utterably untenable. The Rent Regulation recognizes this in guaranteeing possession—actual possession—of Defense Area Housing accommodations unless certain unusual events arise. It cannot be argued that possession is alien to the purposes of this Act.

The respondent further seeks to draw a distinction between the issuance of the eviction certificate and the subsequent proceedings to evict. Respondent maintains that

the tenant is not "subject to" the Price Administrator's order because "the issuance of an eviction certificate to a landlord is not an order to the tenant to vacate" (p. 24, respondent's brief). Obtaining an eviction certificate is a necessary prerequisite to a proceeding for eviction at local law and the granting of such certificate inevitably and necessarily results in the actual eviction unless defenses to the proceeding exist at local law. The only purpose in applying for the certificate is to evict the tenant and once a certificate relating to eviction has been granted by the Price Administrator it acts directly upon the tenant and serves to oust him from his housing accommodations. The tenant is the subject of the certificate of eviction and he is most definitely subjected to the Price Administrator's order.

It is contended that the Administrator has interpreted the phrase "subject to" as permitting only landlords, and never tenants to file protests (p. 16 respondent's brief). Section 1300.216 of Revised Procedure Regulation No. 3 is a limitation solely upon the landlord and not upon the tenant. It defines the circumstances in which "a landlord is for the purpose of this Regulation subject to a provision of a maximum rent regulation or of an order * * *" It does not prohibit a protest by the tenant.

The respondent also notes that when the renewal of the Emergency Price Control Act was under consideration in 1944 and 1945, proposals made to broaden the class of persons who might protest were rejected (p. 21). These proposals were made on behalf of trade associations, such as the National Retailers Association, which was seeking the right of protest on behalf of their members. Chester Bowles, then Price Administrator, stated that trade associations had such right under the Act as constituted (pp. 1474-1475, Hearings before Senate Committee on Banking and Currency on S. 1764). The rights of *tenants* to protest their eviction was *not* considered and rejected at these hearings.

Respondent further contends that to allow tenants and consumers the right to protest and judicial review would impose too great a burden of work upon the Administrator so as to weaken his efforts (p. 23). In the first place, we are not here dealing with the right to review a price or rent schedule. The issue here is limited solely to the right to protest where a tenant is evicted under circumstances which should arouse judicial investigation.

The identical argument of increased administrative burdens has been raised frequently to prevent the expansion of the scope of protests. The fears expressed by such enlargement have not been justified. On April 27, 1944, Chester Bowles, then Price Administrator, appeared before the Senate Committee on Banking and Currency and urged that the time to file protests should not be enlarged from the 60 days then permitted under Section 203(a). Mr. Bowles' statement is reminiscent of the present claim made by the respondent. He stated (Hearings before the Senate Committee on Banking and Currency, 78th Cong. 2d Sess. on S. 1764, pages 1474, 1475):

> "There are very substantial reasons for suggesting that protests directed against the authority of a regulation as originally issued should be filed within 60 days of its issuance. It is of great importance from the point of view of industry as well as that of the Office of Price Administration that legal questions with regard to the basic authority of a regulation should be raised and settled as quickly as possible. * * *
>
> The abolition of all time limitations upon the filing of protests would also create *serious administrative difficulties and would greatly handicap the enforcement of price and rent regulations.* If a protest could be filed at any time, irrespective of changed circumstances, the natural tendency of most violators of

> regulations would be to file a protest as soon as enforcement proceedings were brought against them. This step would frequently be taken merely for the purpose of delaying enforcement proceedings even though there were no substantial basis for the protest. The result would be not only that the enforcement would be greatly handicapped but also that the administrator would be confronted with frivolous protests which would absorb time and energies that could ill be spared from the consideration of protests filed in good faith without reference to enforcement proceedings. As indicated more fully below, the inevitable effect would be to delay the disposition of bona fide protests * * *'' (Italics supplied).

Nevertheless, Section 203(a) was amended to permit protests to be filed "at any time." It does not appear that the Price Administrator's burdens were thereby unduly increased.

To hold that the tenants have a right to protest after they have participated in hearings which resulted in an ultimate order against them, would not, as the respondent contends jeopardize the effective administration of the Act nor result in the assumption of a new administrative burden of great magnitude, because by the time the protest was filed by the tenants, the hearings had been held and over 1000 pages of testimony had been taken. What remained when petitioners filed their protest with the respondent was for him to determine the issues raised by the protest *on the merits* and to rule as a matter of substantive right whether the alleged landlords had brought themselves within the terms of the superseded Regulation, and if so, whether they complied with its terms. Instead, the respondent sought refuge in dismissing the tenants' protests as a matter of procedure. This action has effectively blocked any judicial review of his actions by the

tenants as parties aggrieved. Having reversed his subordinates' findings and rendered an opinion, the Price Administrator cannot contend that the effective administration of the Act would be jeopardized if he entertained petitioners' protest, denied it on the merits and allowed them to review his determination in the Emergency Court of Appeals.

The respondent answers petitioners' argument that they became parties to the proceedings before the area rent director with a right to the full hearing of protest and complaint as defined by the Act, by stating that petitioners were acting as witnesses, not as parties (p. 30). Petitioners were, in no sense, witnesses in the hearings. They were requested to participate and to submit briefs, as they did, in support of their contentions that certificates authorizing their evictions should not be issued, and over 1000 pages of testimony were taken, Landlords' witnesses cross-examined by tenants' counsel, briefs submitted in behalf of tenants and the tenants were considered as parties to the proceeding until the Price Administrator reversed the rulings of his three subordinates and for the first time held that the tenants had no standing to protest his reversal.

The *amici curiae* present substantially the same arguments in their brief. They, too, draw a distinction (without a corresponding difference) between the certificate relating to eviction and the actual eviction itself. They also point to Section 1300.215 of Revised Procedural Regulation No. 3, and seek to interpret this regulation as denying the tenants a right to protest. As above shown, this regulation is a limitation upon the landlord, not the tenant. Moreover, the citation from the opinion of the Emergency Court of Appeals in *Thomas Paper Stock Co. v. Bowles*, 148 Fed. (2d) 831, (p. 9), must be viewed in the light of this Court's statement in *Collins* v. *Porter* (14 U. S. Law Week, 4306), that the ruling in *Thomas Paper Stock Co.* v.

Bowles, 148 Fed. (2d) 831, "we have reversed in *Utah Junk Co.* v. *Porter*, decided this day."

The citation from the opinion of the New York Appellate Division in *Werth* v. *Gordon* (p. 10, landlords' brief) is gratuitous and *obiter dictum* on issues that were neither briefed nor considered in the state court and of which the state court had no jurisdiction. The question of the rights of tenants throughout the nation to protest their evictions which are sought by these cooperative schemes is for this Court to determine.

Contrary to the concession made by the respondent, the *amici curiae* maintain that this is not a case for resort to the protection of the Fifth Amendment. As above stated, since the tenants were accorded a right to possession, subject to divestiture under certain given conditions, they do have a property right which should be given the protection of due process when it is sought to deprive the tenants of their right to continued possession. To interpret the Act as denying the tenants the right to administrative and judicial review, is to that extent to interpret the Act unconstitutionally. It is maintained that the procedures of protest and complaint are available under a proper interpretation of the Act, and that the Price Administrator should be directed to extend such machinery to a tenant who is to be deprived of his living quarters.

Respectfully submitted,

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No. 1075 80

In the Supreme Court of the United States

OCTOBER TERM, 1945

JACK PARKER ET AL., PETITIONERS

v.

PAUL A. PORTER, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1945

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JACK PARKER ET AL., PETITIONERS

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OPINION BELOW

The opinion of the United States Emergency Court of Appeals (R. 74–87) has not yet been reported.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on March 13, 1946 (R. 88). The petition for a writ of certiorari was filed on April 8, 1946. The jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act, c. 26, 56 Stat. 23, as amended, 50 U. S. C. App., Supp IV, 924 (d),

(herein sometimes termed "the Act"), making applicable Section 240 of the Judicial Code, as amended (28 U. S. C. 347).

QUESTIONS PRESENTED

Whether under Section 203 (a) of the Act a tenant may file a protest against, and obtain judicial review of, an order of the Price Administrator, authorizing the owner of particular rented property to proceed to enforce whatever right he may have at local law to evict the tenant.

Whether the Fifth Amendment requires that the tenant be permitted to file such a protest and obtain such judicial review.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, appear in the Appendix, *infra*, pp. 16–20. The Rent Regulation for Housing and Revised Procedural Regulation No. 3, Procedure for Adjustments, Amendments, Protests and Interpretations under Rent Regulations, appear in the Federal Register (10 F. R. 3436; 8 F. R. 526).

STATEMENT

The Rent Regulation for Housing provides (Section 6) that landlords may not exercise their rights at local law to evict tenants from housing accommodations except on stated conditions.

Owners of stock in a cooperative corporation which owned the apartment dwelling in which petitioners resided as tenants sought from the Office of Price Administration certificates authorizing them to exercise their rights at local law to evict the petitioners. After hearings before the area rent director, of which petitioners were notified and in which they participated, the applications were denied. The denial was sustained by the regional rent administrator. A protest to the Price Administrator against these orders of denial was granted, and the requested certificates were issued. Petitioners, the tenants in possession, then filed with the Price Administrator a protest against his order granting certificates to the stockholders. The Price Administrator did not consider on the merits the allegations of the protest, but dismissed it on the ground that petitioners were not "subject to" the order in question, as required by Section 203 (a) of the Act. The petitioners filed a complaint in the Emergency Court of Appeals, claiming to be aggrieved by the failure of the Administrator to consider the protest on the merits. Upon motion of the Price Administrator, the Emergency Court of Appeals dismissed the complaint on the ground that, since the petitioners were not "subject to" the order in question, they had no standing to file a protest under Section 203 (a) of the Act, and therefore no standing to file a complaint.

ARGUMENT

Petitioners urge that the language of the Emergency Price Control Act, as amended, and the provisions of the Fifth Amendment require that they, as tenants of housing accommodations, be afforded an opportunity for administrative and judicial review of an order issued by the Price Administrator relieving their landlords of a bar imposed by the Rent Regulation against the institution of eviction proceedings and permitting the landlords to pursue whatever remedies they may have at local law for the eviction of the tenants. The issue presented is important in that a holding in favor of petitioners would increase the burden of administering the Act manyfold. We believe, however, that consideration of the statutory and regulatory system of rent and price controls demonstrates that the conclusion of the Administrator and the court below that tenants have no such right to review was clearly correct.

The Emergency Price Control Act does not itself impose any limitation on the right of landlords to evict tenants in possession of their property[1] nor does it, in terms, authorize the Administrator to regulate evictions for the purpose of avoiding inconvenience to tenants. Section 1 (a) of the Act does, of course, disclose a concern for tenants insofar as it states the purposes of the Act to be, among other things, "to stabilize

[1] Sec. 4 (b) prohibits landlords from removing a tenant because of action taken by the tenant under the Act.

prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents;" "to protect persons with relatively fixed and limited incomes * * * from undue impairment of their standard of living." But the concern here is with the price and rent level, not with eviction as such.

As Section 2 (a) of the Act authorizes the Administrator to establish maximum prices, so Section 2 (b) authorizes him, under specified circumstances, "by regulation or order [to] establish such maximum rent or maximum rents for such [defense-area housing] accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act." Section 2 (d) contains the broad grant of authority to preserve and protect by administrative action the level of prices and rents established pursuant to paragraphs (a) and (b) of Section 2. It provides, in part, that when

> in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit * * * speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

Pursuant to this authority, the Administrator has included in the Rent Regulation for Housing a section imposing certain limits on the right of landlords to remove tenants who pay their rent (Section 6). Exceptions to this general restriction are set forth in the numerous paragraphs of Section 6. The subparagraphs of paragraph (a) authorize pursuit of remedies at local law if the tenant refuses to renew a lease, unreasonably refuses access to the landlord, violates an obligation of his tenancy, or commits a nuisance; if subtenants are in possession at the expiration of the tenant's lease; or if the landlord had owned the house on the effective date of the regulation and has an immediate and compelling necessity to recover possession for his own occupancy. Paragraph (b) of Section 6 provides that no tenant may be evicted on any other grounds "unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law."

In addition to a general provision for the issuance of certificates by the Administrator when the landlord establishes that the evictions "are not inconsistent with the purposes of the Act or this regulation and would not be likely to result in the circumvention or evasion thereof," provision is made for the issuance of certificates to permit occupancy by the purchasers of housing accommodations (Section 6 (b) (2)), and specifically

for the purchasers of stock in a cooperative corporation (Section 6 (b) (3)). It was under this latter provision that the Administrator issued certificates to purchasers of stock in the apartment building in which petitioners were living.

The procedure governing applications for eviction certificates, and proceedings for changes in rents under the numerous individual adjustment provisions in the Rent Regulation (Section 5 (a), (b), (c)), is established in detail by Revised Procedural Regulation No. 3 issued pursuant to Section 203 (a) of the Act. As required by the procedural regulation, the purchasers filed their applications on appropriate forms with the director of the defense-rental area in which the property was situated (Sections 1300.202, 1300.203). The duties of the area rent director are set forth in Section 1300.206:

> *Investigation of petitions and applications.*—Upon the filing of a petition or application pursuant to the provisions of this regulation, the rent director may make such investigation of the facts involved in the petition or application, hold such conferences, and require the filing of such reports, evidence in affidavit form or other material relevant to the proceeding, as he may deem necessary or appropriate for the proper disposition of the petition or application.

To aid the director in disposing of the application, copies of the forms filed by the landlords

were mailed to the tenants, in this as in other types of cases, advising them that they might submit any information they desired in connection with the matter. As authorized by Section 1300.208 of the Procedural Regulation, the area rent director caused an oral hearing to be held for the taking of testimony, during the course of which evidence was presented by the petitioners. After denial of the application by the area rent director, it was reviewed by the regional administrator (Section 1300.209) who sustained the denial. The purchasers then filed a protest with the Administrator (Section 1300.216) who, after due consideration, granted the protest and issued the certificates.

Thereupon, the tenants involved, the petitioners here, filed a protest against the order of the Administrator granting the certificates. This was dismissed on the ground that the tenants were without standing to protest. This action was clearly required by the procedural regulation. Section 1300.215 provides that a landlord subject to a provision of a maximum rent regulation or order may file a protest, and that a landlord "is * * * subject to a provision of a maximum rent regulation or of an order, only if such provision prohibits or requires action by him."[2]

[2] The quoted clause first appeared as Sec. 1300.215 of Revised Procedural Regulation No. 3, issued January 12, 1943, 8 F. R. 526. As originally issued on May 25, 1942 (7 F. R. 3936), Procedural Regulation No. 3 did not contain the quoted clause, but authorized protests to be filed only by landlords (Sec. 1300.208). A clause substantially identical to

The court below observed that the administrative definition of the statutory phrase granting the right of protest to persons "subject to" a regulation or order (Sec. 203 (a)) had been subjected to some qualification (R. 75). The Administrator in revising Procedural Regulation No. 1, applicable to maximum price regulations, included a provision that producers of agricultural commodities should be considered subject to a maximum price regulation for the purpose of asserting any right created for the benefit of producers by Sec. 3 (c) of the Act. And in *Illinois Packing Company* v. *Snyder*, 151 F. 2d 337 (E. C. A. 1945) the Emergency Court of Appeals, after holding that subsidy regulations issued under the authority of Section 2 (e) of the Act were regulations or orders under Sec. 203 (a), concluded that a person claiming to be arbitrarily discriminated against by such a regulation was "subject to" it within the meaning of Sec. 203 (a). The nature of the circumstances involved in these departures emphasizes, however, the lack of basis for holding that tenants are authorized to protest. In Section 3 (c) of the Act producers of agricultural commodities were afforded protection to their substantive interest against the possibility that price ceilings on

---

the quoted clause appeared in Procedural Regulation No. 1, dealing with maximum price regulations, as originally issued February 12, 1942 (7 F. R. 971, Sec. 1300.9), and has been retained.

processed agricultural commodities would be used to depress the prices of unprocessed agricultural commodities below the minimum price levels which Congress sought to preserve. Processors would not necessarily have an interest in protecting the level of farm prices, and the Administrator's obligation to control the price level generally might create some conflict with the protection the statute sought to afford. Opportunity was therefore given to the persons directly affected to seek administrative review leading to judicial review. Similarly, once it was determined that a subsidy program under Section 2 (e) was a regulation or order within the meaning of Section 203 (a) of the Act, it became necessary to permit the persons whose economic interests were directly affected to seek review.

But the two foregoing situations are wholly different from the general pattern of relationships created by the Act. The Congress entrusted to the Price Administrator the responsibility for holding down prices and rents to prevent inflation with its train of evils and conferred broad powers upon him to achieve that purpose. In exercising those powers, the Administrator imposes restrictions primarily upon those who sell goods and rent housing accommodations. Since sellers and landlords are prohibited from doing certain things by price and rent regulations, their right to administrative and judicial review of orders and regulations governing them is clear. Both the

language of the Act which confers the right to protest and the administrative interpretation of this language protect this basic right. The natural meaning of "subject to" does not extend, however, to one who, like the petitioners, is not under administrative restraint. In this case the order which petitioners seek to protest does no more than relieve their landlords of a restraint otherwise imposed by the regulation; it adds nothing to the rights of the landlords to the possession of their property.

The use of the narrow phrase "subject to" in contrast to the broader customary language of party "affected"[3] or "aggrieved"[4] in defining the persons who should have the right of protest and of judicial review is a strong indication that it was not intended to empower buyers and tenants to test judicially the propriety of price or rent increases or other action relaxing controls. That the language was used advisedly appears from the Senate report which accompanied the original bill, in which it was stated that—

> Section 203 (a) is designed to provide the advantages of a hearing, in a manner consistent with the need for expeditious de-

[3] See, *e. g.*, Walsh-Healey Act, 49 Stat. 2036, 2038, Sec. 5, 41 U. S. C. 39; Federal Communications Act, 48 Stat. 1064, 1093, Sec. 402, 47 U. S. C. 402.

[4] See, *e. g.*, Federal Power Act, 49 Stat. 838, 860, Sec. 213, 16 U. S. C. 825 (*l*). Cf. *United States* v. *Public Utilities Commission*, 151 F. 2d 609 (App. D. C.).

terminations, to all persons who are required to obey the provisions of regulations or orders under section 2. [S. Rep. No. 931, 77th Cong. 2d sess., p. 22.]

Furthermore, when the renewal of the Act was under consideration in 1944 and 1945 proposals were made to the Congress for broadening the class of persons who might protest.[5] The proposals were rejected.

There can be little doubt, in view of the foregoing, that the Congress did not intend to make the Administrator a judge in a contest between seller and buyer or landlord and tenant whenever prices or rents were to be raised or other restraints removed or relaxed. The plan of the statute as a whole indicates that the public interest in protecting the community as a whole from the dangers of inflation was entrusted to the Administrator, and that the right to seek judicial review of his actions was to be limited to those upon whom the regulatory restraints bore directly.

Petitioners urge, however, and the dissenting judge below concluded, that the failure to allow these petitioners the right to seek administrative

[5] Hearings before the Senate Committee on Banking and Currency, 78th Cong., 2d sess. on S. 1764, pp. 474, 1304, 1325, 1330, 1367, 1474; Hearings before the House Committee on Banking and Currency, 78th Cong., 2d sess. on H. R. 4376, pp. 449, 495, 568. Hearings before Senate Committee on Banking and Currency, 79th Cong., 1st sess. on S. J. Res. 30, p. 452.

and judicial review would result in a deprivation of their constitutional rights under the Fifth Amendment. This argument rests upon the premise that the statute created in tenants a right to maintain possession of property rented by them. We submit that this premise is clearly erroneous. Its unsoundness is shown by what has just been said as to the essential character of the statutory pattern: the importance of a general duty upon the Administrator to prevent inflation from occurring, rather than the creation of a multitude of rights in individual consumers and tenants to the maintenance of particular prices or rents or other restraints. This view is reinforced by the fact that, under Section 4 (a) of the Act, tenants are not subject to sanctions for paying in excess of the prescribed maximum rents.

That the statute does not create in tenants the right to continued possession is also demonstrated by the derivative nature of the regulatory provisions concerning evictions. As is pointed out above, the Act does not authorize the Administrator to restrict evictions for the sake of preserving tenants in possession, but merely authorizes him to control evictions to the extent necessary to protect the structure of maximum rents. See *Taylor* v. *Bowles*, 145 F. 2d 833 (ECA, 1944). While this purpose may justify a sweeping control over evictions—and conceivably in some circumstances a complete prohibition

(Cf. *Gemsco, Inc.* v. *Walling*, 324 U. S. 244)—the derivative nature of the power prevents its being construed as creating rights in particular tenants. In the absence of such rights, there is no constitutional difficulty in the way of accepting what clearly appears to have been the intention of the Congress in establishing the review provisions of the Act.

Petitioners also urge that because they participated in the proceedings before the area rent director, they became parties to the proceeding and therefore acquired a constitutional right to be heard before the Administrator acted favorably to the landlords. This argument stems from the previous one and must fall with it. If petitioners were not asserting any legal rights of their own, their status in the proceeding was essentially that of witnesses. Indeed, while Revised Procedural Regulation No. 3 provides that tenants may file applications for reductions in rents (Sec. 1300.205, Rent Regulation for Housing, Sec. 5 (c)), it also provides that action on such an application shall be in the discretion of the rent director and that the procedure shall be the same as in proceedings initiated by the rent director. It may be observed that if tenants otherwise have no right to protest, their interests and the effective administration of the Act would be seriously jeopardized by a holding that they acquired such a right merely by being allowed to appear to present relevant evidence. For the

Administrator would be confronted with the alternatives of denying himself access to an important source of information or assuming a new administrative burden of great magnitude.

We submit, therefore, that the statute reasonably construed did not authorize petitioners to file a protest, and that no constitutional doubts are created by thus construing the statute.

CONCLUSION

The decision below is correct, and there is no warrant for further review. The petition should therefore be denied.

Respectfully submitted,

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Office of Price Administration.

APRIL 1946.

APPENDIX

The pertinent provisions of the Emergency Price Control Act of 1942 (56 Stat. 23), as amended by the Stabilization Extension Act of 1944 (58 Stat. 632), (50 U. S. C. App., Supp. IV, 901 et seq.) are as follows:

* * * * *

SEC. 2. (b) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommoda-

tions, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs within such defense-rental area. * *

* * * * * *

(d) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

SEC. 4 (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of

trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder.

SEC. 203. (a) *At any time after the issuance of any regulation or order under section 2, or in the case a price schedule, at any time after the effective date thereof specified in section 206,*[6] any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in sup-

[6] As amended by sec. 106 of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206."

port of such objections.[7] Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing,[8] the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the

[7] As amended by sec. 106 of Stabilization Extension Act of 1944. At this point the following language was stricken out: "At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days."

[8] As amended by sec. 106 of Stabilization Extension Act of 1944. At this point the following language was stricken out: "or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later."

Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided,* That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court

shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

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ON WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 80

JACK PARKER ET AL., PETITIONERS

v.

PAUL A. PORTER, PRICE ADMINISTRATOR

ON WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The majority, concurring, and dissenting opinions of the United States Emergency Court of Appeals (R. 63–82) are reported in 154 F. 2d 830.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on March 13, 1946 (R. 83). The petition for writ of certiorari was filed in this Court on April 8, 1946. Certiorari was granted on May 13, 1946 (R. 85). The jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act, as amended (56 Stat. 23; 50 U. S. C. App., Supp.

V, 924 (d)), making applicable Section 240 of the Judicial Code, as amended (28 U. S. C. 347).

QUESTIONS PRESENTED

1. Whether under Section 203 (a) of the Act a tenant is a person "subject to" an order of the Price Administrator authorizing the owner of particular rented property situated in a "defense-rental area" to proceed to enforce whatever right he may have at local law to evict the tenant, and therefore is entitled to file a protest against, and obtain judicial review of, such order.

2. Whether the Emergency Price Control Act, when construed to deny to a tenant the right of administrative and judicial review of an order authorizing a landlord to exercise his right at local law to evict the tenant, deprives the tenant of his property without due process of law within the meaning of the Fifth Amendment to the United States Constitution.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended (herein sometimes termed "the Act"), the Rent Regulation for Housing for the New York City Defense-Rental Area (herein sometimes termed "the Rent Regulation"), and the other regulations involved, are set forth in the Appendix, *infra*, pp. 32–56.

STATEMENT

Section 2 (b) of the Emergency Price Control Act, as amended, *infra*, pp. 32–33, authorizes the

Price Administrator to establish by regulation or order maximum rents for defense-area housing accommodations situated in defense-rental areas designated by him. Section 2 (d) of that Act, *infra,* p. 34, provides that the Administrator, in order to effectuate the purposes of the Act, may by regulation or order prohibit "speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment * * * are likely to result in * * * rent increases. Section 6 of the Rent Regulation for Housing for the New York City Defense-Rental Area, *infra,* pp. 43–51, issued by the Price Administrator under the authority of the Act, provides that purchasers of stock in a cooperative organization who are entitled by virtue of their stock ownership to proprietary leases on the apartments in the structure owned by the organization, may not exercise their rights at local law to evict the tenants occupying such apartments until the Price Administrator has issued certificates authorizing such purchasers to pursue their remedies for removal or eviction of the tenants in accordance with the requirements of local law. Sections 6 (b) (2) and 6 (b) (3) set forth the conditions under which the Administrator will grant such certificates.

The 55 Corporation is the owner of an apartment dwelling situated at No. 55 Central Park

West, New York City (R. 2). Purchasers of stock in the 55 Corporation, who through their ownership of the stock were each entitled to a proprietary lease on one of the apartments under a cooperative plan, filed with the Office of Price Administration applications for certificates which would authorize them to exercise their rights under the local law to evict petitioners, who resided in the apartment dwelling as tenants of the corporation (R. 5–6, 20). After hearings held before the area rent director, of which petitioners were notified and in which they participated, the applications were denied by that officer (R. 7–9), and the denial was subsequently affirmed by the regional rent administrator (R. 8). A protest against the order of denial filed by the purchasers of the stock with the Office of Price Administration was sustained by the Price Administrator, and, in accordance with that action, an order was issued by him granting the requested certificates (R. 21). Petitioners, the tenants in possession, then filed with the Price Administrator a joint protest against the order granting the certificates to the stockholders (R. 21). The Price Administrator did not consider on the merits the allegations of the protest, but dismissed it on the ground that petitioners were not "subject to" the order in question as required by Section 203 (a) of the Act (R. 21–22). Thereafter, petitioners filed a complaint in the Emergency Court of Appeals,

claiming to be aggrieved by the failure of the Administrator to consider the protest on its merits (R. 1–16). Upon motion of the Price Administrator, the Emergency Court of Appeals dismissed the complaint, holding that petitioners were not "subject to" the order in question; that they therefore had no standing to file a protest under Section 203 (a) of the Act; and that as a consequence they had no standing to maintain a complaint in that court (R. 19, 63–82).

SUMMARY OF ARGUMENT

I

Neither the Act nor the Rent Regulation confers upon tenants private rights to possession of housing accommodations which they may assert in the review proceedings provided for by the Act.

A. The Act itself confers no such rights. Except for Section 4 (b), there is no provision in the Act limiting rights of landlords to regain possession of premises. The power of the Administrator under Section 2 (d) of the Act, to regulate or prohibit speculative or manipulative practices was conferred by the Act only for the purpose of effecting the stabilization of rents, and not to protect individual tenants in their possession of housing accommodations.

B. The conditional restriction imposed on landlords by Section 6 of the Rent Regulation with respect to the eviction of tenants does not operate

to create private rights to possession in tenants. While the section does give to tenants some added protection which they would not otherwise have, it was not intended by the Congress to create individual rights, but was intended solely to protect the public generally against action by landlords which might imperil rent stabilization. Petitioners' asserted rights to possession are no different from the interest of tenants generally in stabilized rents. Petitioners, therefore, had no property rights of which they could be deprived.

C. Sections 203 and 204 of the Act were designed to afford administrative and judicial review only to sellers of commodities, business buyers, and landlords. The legislative history of the Act amply demonstrates that the phrase "subject to," as used in Section 205 (a), was meant to be limited accordingly. The Congress contemplated that the Price Administrator would protect the public interest, and did not intend that individual tenants should assert the public interest in effective stabilization in the protest and review proceedings established by the Act. The Administrator's interpretation of the Act, as embodied in Section 1300.216 of Revised Procedural Regulation No. 3, restricting the protest procedure to landlords, is reasonable, and is fully authorized by the Act. When the Congress has desired to enlarge the class of persons entitled to judicial review, it has used less restrictive terms than

"subject to." In such instances it has used terms of a broader connotation, such as "person aggrieved," "person adversely affected," and similar expressions. And in both the present and previous rent-control statutes for the District of Columbia the Congress used express language in giving tenants the right to petition and review. Furthermore, the Congress has in several instances rejected proposals to amend the Price Control Act by enlarging the class of persons entitled to protest. By such action, the Congress has indicated that, under the system established by the Act, the interests of consumers and tenants were to be safeguarded by the Price Administrator; *a fortiori,* it has supported the Administrator's interpretation that such interests may not be asserted in the review proceedings established by the Act.

II

The fact that petitioners were permitted to participate in the proceedings before the area rent director did not confer upon them the right to protest under Section 203 (a) of the Act. In accordance with Section 1300.206 of Revised Procedural Regulation No. 3, the area rent director is authorized to make investigations and secure information from all sources. The status of petitioners before the area director was, therefore, that of witnesses.

I

NEITHER THE ACT NOR THE RENT REGULATION CONFERS UPON TENANTS PRIVATE RIGHTS TO POSSESSION OF HOUSING ACCOMMODATIONS WHICH THEY MAY ASSERT IN THE ADMINISTRATIVE AND JUDICIAL REVIEW PROCEEDINGS PROVIDED FOR BY THE ACT.

A. The Act confers no private rights upon tenants to possession of housing accommodations.

The primary purpose of the Emergency Price Control Act of 1942, as amended, is to stabilize prices and rents. Nowhere, except in Section 4 (b), does the Act expressly limit any rights which landlords may otherwise have to evict tenants. Section 4 (b) limits the landlord's right to have a tenant evicted only when he seeks to do so because the tenant "has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder", and is plainly inapplicable here.[1] The Congress, however, recognized that unrestrained evictions of tenants generally might defeat the basic purpose of Section 2 (b) of the Act, which was to stabilize rents. Accordingly, the Administrator was given the authority by Section 2 (d) of the Act to regulate or prohibit

[1] That provision was intended to protect tenants who might complain to the Office of Price Administration that landlords were charging unlawful rents, or who might bring actions against landlords under Section 205 (e) of the Act for treble damages. See H. Rept. No. 1409, 77th Cong., 1st Sess., p. 8; S. Rept. No. 931, 77th Cong., 2d Sess., p. 20; Hearings before House Committee on Banking and Currency on H. R. 5479 (superseded by H. R. 5990), 77th Cong., 1st Sess., p. 961.

> * * * speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in * * * rent increases * * * inconsistent with the purposes of this Act.

Thus, the Price Administrator was given the power to regulate or prohibit evictions, but only when in his judgment it would be necessary to do so in order to stabilize rents. Hence, the Congressional purpose in authorizing the Price Administrator to regulate or prohibit evictions by landlords, was not to confer upon individual tenants private rights to possession which they did not possess before, but to aid the Administrator in maintaining effective rent regulation by preventing evasions of the Act.[2] *Taylor* v. *Brown*, 137 F. 2d 654, 662 (ECA), certiorari denied, 320 U. S. 787. Cf. *Porter* v. *Lee*, Nos. 1116–1117, October Term, 1945, decided May 27, 1946.

B. The restriction imposed by Section 6 of the Rent Regulation upon the rights of landlords to evict tenants does not create private rights to possession in individual tenants

Pursuant to Section 2 (d) of the Act, the Administrator has included in the Rent Regulation

[2] That this is the case is further indicated by Section 4 (d) which provides that "Nothing in this Act shall be construed to require any person * * * to offer any accommodations for rent."

a provision which prohibits landlords generally from instituting eviction proceedings at local law against tenants who pay their rent. This general restriction is conditional, not absolute.[3] The conditions under which it will be lifted are set forth in Section 6 of the Rent Regulation, *infra*, pp. 43–50. Thus, Section 6 (a) authorizes the landlord to pursue his remedies at local law if the tenant refuses to renew a lease, unreasonably refuses access to the landlord, violates an obligation of his tenancy, or commits a nuisance on the premises. The restriction is likewise lifted if sub-tenants are in possession at the expiration of the tenant's lease, or if the landlord owned the house on the effective date of the regulation and has an immediate and compelling necessity to recover possession for his own occupancy. In addition, Section 6 (b) (1) authorizes the landlord to petition the Administration for a certificate permitting him to institute proceedings at local law to evict the tenant on grounds other than those specified in Section 6 (a). Specific provision is made, in Section 6 (b) (2), for the issuance of certificates, under certain conditions, to purchasers of housing accommodations which they seek to occupy and, in Section 6 (b) (3), for the issuance of certificates, under certain conditions,

[3] This is not to say that the Administrator may not have the authority, if necessary to effectuate the purposes of the Act, to prohibit all evictions. Cf. *Gemsco, Inc.* v. *Walling*, 324 U. S. 244.

to purchasers of stock in cooperative organizations owning multiple dwelling structures who seek to occupy apartments in the structure by reason of their stock ownership.[4] Applicants for certificates under Section 6 (b) (3) must also satisfy the conditions of Section 6 (b) (2).[5] It is further provided in Section 6 (e) that the enumeration in Section 6 of the conditions under which a landlord may resort to local law to evict a tenant shall not be construed "to authorize the removal of a tenant unless such removal is authorized under the local law."

It is true, of course, that Section 6 of the Rent Regulation affords tenants greater protection in their continued possession of housing accommodations than they would have in its absence. Cf. *Brand* v. *Chicago Housing Authority*, 120 F. 2d 786 (C. C. A. 7). But the basic question in this case is whether Section 6 confers upon ten-

[4] Section 6 (b) (3) was added by Amendment 17, issued February 16, 1945 (10 F. R. 1974), to prevent the exaction of payments from tenants equivalent to rent increases, which was occurring because of the sale of proprietary leases to apartments in multiple dwelling units as part of so-called "cooperative" ventures. See Statement of Reasons accompanying Amendment No. 17, *infra*, pp. 51-56. (Pike & Fischer, OPA Service, pp. 200:393—T, U, and V.)

[5] It was under Sections 6 (b) (2) and (3) that the Administrator issued his orders granting certificates to the purchasers of the stock in the apartment building in which petitioners are living. Orders granting or denying such certificates are orders under Section 2 of the Act which may be attacked only in accordance with the provisions of Sections 203 and 204 of the Act.

ants private rights to possession of housing accommodations of such nature as may, under Sections 203 and 204 of the Act, be asserted by protest to the Administrator and complaint to the Emergency Court of Appeals. It is clear that if the Administrator refuses to issue a certificate under Section 6 (b) to a landlord, or if the landlord without applying for a certificate resorts to local law to evict the tenant on grounds other than those specified in Section 6 (a), the tenant may assert lack of compliance with Section 6 as a bar to the landlord's obtaining a judgment of eviction, and the Administrator, in such case, may resort to the federal courts to enjoin the landlord from prosecuting the eviction proceedings against the tenant or even to restrain execution of a local court's judgment of eviction. *Porter* v. *Lee,* Nos. 1116–1117, October Term, 1945, decided May 27, 1946; *Porter* v. *Dicken,* No. 1118, October Term, 1945, decided May 27, 1946. Is this protection, which is conditioned upon the fact that the landlord has not satisfied the requirements of Section 6, the only protection which the tenant possesses? Or does the very existence of Section 6 confer private rights upon tenants which give them standing to protest and to seek judicial review of the provisions of Section 6 or the issuance of eviction certificates thereunder, on the ground, for example, that these provisions do not impose sufficiently stringent restrictions upon landlords,

or that the landlord did not make out a proper case for the issuance of an eviction certificate?

After careful consideration, the Administrator concluded that Section 6 of the Rent Regulation could not be construed as conferring any such right upon tenants. In our view, when a tenant at local law urges lack of compliance with Section 6 as barring the landlord from obtaining a judgment of eviction, he is not asserting a private right vested in him by the Act or the Rent Regulation, but is asserting that the federal law, which is made the supreme law of the land by Article VI of the United States Constitution, has not been obeyed by the landlord, and that in the public interest the landlord should not be permitted to gain any advantage from his violation of the law. In other words, Section 2 (d) of the Act and Section 6 of the Rent Regulation issued thereunder are not intended to protect individual tenants by creating private rights in them which they did not have before, but to protect the public interest against action by landlords tending to undermine the rent stabilization program.

It is submitted, therefore, that the interest petitioners are seeking to assert in this proceeding is basically similar to the nonlitigable interest of tenants generally that maximum rents shall not be too high or the interest which consumers generally had that the Administrator should not fix maximum prices that were

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too high. It is the interest of the general public in an effective stabilization program.[6]

There would certainly seem to be as much reason for holding that a tenant may protest and secure judicial review of a regulation fixing the general level of maximum rents or of an order of the Administrator granting a rent adjustment to his landlord as for holding that a tenant may protest the issuance of an eviction certificate under Section 6 of the Rent Regulation. A tenant's right to challenge the Administrator's exercise of authority to restrict evictions, which is lodged in the Administrator only to assure maintenance of the established maximum rents, can be no greater than his right to challenge the established maximum rents themselves. Nor is there any basis for distinguishing between the tenant's interest in not being evicted and his interest in a maximum rent that is not too high. A higher rent which a tenant is unable to pay may result as certainly in his dispossession as the issuance of an eviction certificate which still permits him to exercise any rights he may have at local law to resist eviction.

[6] If respondent's view in this regard is correct, petitioners had no "property" of which they could be deprived by the Administrator, and refusing petitioners the right to protest and secure judicial review in this case does not violate the Fifth Amendment. On the other hand, if petitioners do have a private right to possession of which they have been deprived by the Administrator, respondent would agree that the phrase "subject to" in Section 203 (a) of the Act should be construed to give petitioners the right to protest and to judicial review in this case.

That the tenants in this case are seeking to assert the public interest, and not private rights, is further indicated by the fact that evidence of the personal situation of tenants is not relevant to an administrative determination to grant or deny eviction certificates under Section 6 (b) of the Rent Regulation. The only question under Section 6 (b) is whether the eviction in the particular case would be in aid of an attempt to circumvent rent control, and not the degree of hardship that would be inflicted upon tenants if they should be evicted.

C. Sections 203 and 204 of the Act afford administrative and judicial review only to sellers of commodities, buyers in the course of trade or business, and landlords

Section 203 (a) of the Emergency Price Control Act of 1942, as amended, provides that only a person "subject to" a provision of a regulation or order issued under Section 2 of the Act may file a protest against it. Section 204 (a) of the Act provides that any person who is aggrieved by the denial of his protest may file a complaint with the Emergency Court of Appeals asking that the regulation or order protested be enjoined or set aside. Only a person, therefore, who has standing to protest may, in the event his protest is denied, file a complaint in the Emergency Court. *Illinois Packing Co.* v. *Bowles,* 147 F. 2d 554 (ECA).

We submit that the use by the Congress of the restrictive phrase "subject to" in Section 203 (a) of the Act, together with the legislative history of that section, leaves no doubt that the Congress did not intend that consumers and tenants should have the right to assert the public interest in effective stabilization by attacking the validity of regulations and orders in the administrative and judicial proceedings provided by the Act. The Congress vested in the Price Administrator the guardianship of the public interest. Cf. *Federal Trade Commission* v. *Klesner,* 280 U. S. 19; *Amalgamated Utility Workers (C. I. O.)* v. *Consolidated Edison Co. of New York,* 309 U. S. 261. His efforts were to be judged by the results achieved. If he should fail, the public could look for relief in forums other than the courts of law. Administrative and judicial review was afforded only to sellers of commodities, buyers in the course of trade or business, and landlords. Accordingly, in Section 1300.216 of Revised Procedural Regulation No. 3,[7] the Administrator has interpreted the phrase "subject to" in Section 203 (a) of the Act as permitting only landlords, and never tenants, to file protests against rent regulations or orders.

The phrase "subject to" in Section 203 (a) of the Act has a more restrictive connotation than

[7] See the provisions of Section 24 of Revised Procedural Regulation No. 1, *infra*, p. 39, and Section 1300.216 of Revised Procedural Regulation No. 3, *infra*, pp. 40–41.

such phrases as "person affected," "person aggrieved," "person adversely affected," or similar phrases which Congress has used in various other statutes, when it has desired to give a broader class of persons rights to administrative and judicial review than the class which, in our opinion, was given rights to such review under Sections 203 and 204 of the Act.[8] At one stage of its history, the price control bill provided a right to protest and judicial review to "any person who is aggrieved by any order or regulation of the Administrator," but this provision was stricken.[9] Those opposing the bill containing

[8] For cases holding that particular classes of persons are afforded administrative and judicial review, see *American Power & Light Co.* v. *Securities & Exchange Commission*, 325 U. S. 385; *United States* v. *Public Utilities Commission*, 151 F. 2d 609, 613 (cases, and examples of statutes collected in footnote 13 of opinion); *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470; *Columbia Broadcasting System* v. *United States*, 316 U. S. 407; *Federal Communications Commission* v. *National Broadcasting Co.*, 319 U. S. 239; and *Stark* v. *Wickard*, 321 U. S. 288. For cases holding that particular persons had no right to review, see *Alabama Power Co.* v. *Ickes*, 302 U. S. 464; *Tennessee Electric Power Co.* v. *Tennessee Valley Authority*, 306 U. S. 118; and *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113. These decisions rest upon determinations as to whether the particular statutory language and the pattern of the statute as a whole evidence an intention on the part of the Congress to provide judicial review for the classes of persons there involved.

[9] Section 203 (a) of the bill as originally introduced contained the words "subject to." H. R. 5990 as reported in the House, November 3, 1941; H. Rep. No. 1409, 77th Cong., 1st Sess., p. 10. However, an amendment, recommended by the

this provision recognized that it would have given buyers (or tenants) a right to appeal for a lower price (or rent).[10]

House Banking Committee, and providing for a complete new plan of administration, including a Board of Administrative Review, was introduced on the floor; and new sections numbered 201 and 204 were added (87 Cong. Rec. 9225–9226; substitute amendment offered by Representative Wolcott). The new Section 204 provided that "any person who is aggrieved by any order or regulation of the Administrator" might appeal such order or regulation to the Board of Administrative Review. This amendment, in substance, together with further provisions permitting any person aggrieved by the determination of the Board of Review to file a petition to review such determination in a circuit court of appeals was passed by the House on November 28, 1941 (87 Cong. Rec. 9247). When the bill reached the Senate all of the language of the bill after the enacting clause was stricken and the language of the Senate Banking Committee bill was substituted therefor. (88 Cong. Rec. 94–98.) The bill containing the substituted language passed by the Senate reinstated the original Section 203 (a) (and with it the phrase "subject to"), and this language was retained in the final Act.

[10] Thus, Mr. David Ginsburg, then General Counsel of the Office of Price Administration and Civilian Supply, informed the Senate Committee:

"The House has suggested a third kind of provision. The House, first, has the prices fixed by the Administrator. Then any person aggrieved or substantially affected by the order of the Administrator may take an appeal to a five-man board * * *

* * * * *

"Under the House bill any person aggrieved, as Mr. Henderson pointed out, either the buyer or the seller, may appeal to this board. In the considered judgment of our staff, trading in hundreds of commodities would stop, actually stop, because of the possibility that sellers might get a higher price. Remember also that the buyer may appeal for a lower

In repudiating the bill originally passed by the House, the Congress also eliminated another of its sections, 2 (j), which specifically permitted the tenant to petition for adjustment of the rent ceiling on the ground that it was unduly high.[11]

The Senate Report thus explains the provisions of Section 203 (a) which appeared in the final Act:

> Section 203 (a) is designed to provide the advantages of a hearing, in a manner consistent with the need for expeditious determinations, *to all persons who are required to obey the provisions of regulations or orders under section 2. It provides that any person subject to* any of the provisions of any regulation or order issued under section 2 of the bill, may * * * file a protest * * *. Other interested parties may submit statements in support of any such provision * * *. [Italics supplied] (Sen. Rep. No. 931, 77th Cong., 2d Sess., p. 22.)[12]

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price." (Hearings before Senate Committee on Banking and Currency, 77th Cong., 1st sess., on H. R. 5990, p. 145.)

[11] Representative Dirksen, who introduced this section, stated that he was following the precedent of the pending District of Columbia Emergency Rent Bill, which allowed applications for review by either the landlord or the tenant (87 Cong. Rec. 9211).

[12] Petitioners lay stress upon the statement of Congressman Steagall, quoted at page 21 of petitioners' brief, that the provision of the House Bill "gave anybody dissatisfied with any order, ceiling, or regulation of the Administrator the right to appear and protest the action of the Administrator"

Section 4 (a) of the Act, in effect, restricts the class of persons required to obey the provisions of a regulation or order under Section 2 to sellers of commodities, buyers of commodities in the course of trade or business, and landlords.[13] It would seem, therefore, that only these classes of persons are "subject to" the provisions of a rent or price regulation or order.[14] The "other interested parties" given a right under Section 203 (a) to "submit statements in support of any such provision" must refer to consumers—either buyers of commodities for ultimate use or tenants.

The use of the restrictive phrase "subject to" in Section 203 (a) of the Act becomes even more significant when it is recalled that when, as in

(88 Cong. Rec. 664). The general remarks of Mr. Steagall do not lend any support to petitioners' contention in view of the clear and specific wording of the Act, the Committee Reports, and the entire legislative history. Obviously, Mr. Steagall was speaking in general terms rather than using terms of art. Consequently, the phrase used by him should not be read literally.

[13] Congress decided that compliance with maximum price and rent regulations would be furthered more by giving consumers a right to sue sellers of commodities or landlords for three times the amount of any overcharge than by making it unlawful for consumers to pay more than the maximum price or rent. See Section 205 (e). It would have been impossible to make it unlawful for a consumer to overpay and yet give him a right, in spite of his unlawful action, to bring a treble damage suit against the seller or landlord. Hearings before Senate Committee on Banking and Currency on H. R. 5990, 77th Cong., 1st sess., p. 141.

[14] A buyer in the course of trade or business is "subject to" a price regulation or order only to the extent that he may protest that such regulation or order fixes a maximum price

the statutes relating to the District of Columbia, the Congress wished to give tenants a right to judicial review of the decisions of a Rent Administrator, it did so in express language.[15]

Moreover, the Congress appears to have ratified and approved the Administrator's construction of the phrase "subject to" in Section 203 (a). When the renewal of the Act was under consideration in 1944 and 1945, proposals were made to broaden the class of persons who might protest.[16] Among the proposals was one to extend the class to any "person aggrieved"[17] and another to require that "no protest shall be dismissed because of the absence of direct damage" to the person filing the protest.[18] All of these proposals were rejected.

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that is too low. He may not protest that such maximum price is too high. *Buka Coal Co.* v. *Brown*, 133 F. 2d 949 (ECA).

[15] See The District of Columbia Emergency Rent Act, Sections 4 (a), 4 (c), 4 (e), 4f, 8, and 9 (55 Stat. 788), which was considered by the Congress at the same time as the Emergency Price Control Act, and was passed several months prior to the passage of the latter Act. See also the District of Columbia Rent Act, Sections 106 and 108, enacted during World War I (41 Stat. 297).

[16] Hearings before the Senate Committee on Banking and Currency, 78th Cong., 2d Sess., on S. 1764, pp. 474, 1304, 1325, 1330, 1367, 1474. Hearings before the House Committee on Banking and Currency, 78th Cong., 2d Sess. on H. R. 4376, pp. 449, 495, 568. Hearings before Senate Committee on Banking and Currency, 79th Cong., 1st Sess. on S. J. Res. 30, p. 452.

[17] Hearings before the Senate Committee on Banking and Currency, 78th Cong., 2d Sess. on S. 1764, p. 1330.

[18] Id. at p. 1366–7.

Furthermore, it is the considered opinion of the Administrator that the construction of Section 203 which he has adopted will best protect the public interest in effective rent stabilization. It is the function of the courts, of course, to assure that the Administrator follows the standards laid down by Congress to guide him in the performance of his duties. *Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503. Even in time of war, the difficult task of preventing inflation, so necessary to the successful prosecution of the war, was not entrusted to the Executive Branch of the Government free from such judicial scrutiny. These standards basically, prescribe minimum levels below which the Administrator may not go in establishing maximum prices and rents. *Gillespie-Rogers-Pyatt Co., Inc.* v. *Bowles*, 144 F. 2d 361 (E. C. A.); *315 West 97th Street Realty Co., Inc.* v. *Porter*, 156 F. 2d 982 (E. C. A.), pending on petition for certiorari, No. 526. They place a limit upon the authority of the Administrator to restrict the exercise, by the business community, of rights which it possesses in peacetime. It is the business community (sellers of commodities, buyers of commodities in the course of trade or business, and landlords) whose actions are intended to be limited by the Act and who are therefore required, under the threat of criminal and civil penalties, to obey the regulations and orders of the Price Administrator. It is the purpose, therefore, of

Sections 203 and 204 of the Act to give to those who comprise the business community the right of judicial review so that they will be assured that the Administrator conforms to the limitations placed upon his authority. Although the basic purpose of the Administrator in fixing maximum prices and rents is to protect the public interest, so long as he does not fix them so low as to contravene the requirements of law he has a very broad discretion under the Act in his choice of the levels of maximum prices and rents that he may establish. While judicial review of the Administrator's exercise of this broad discretion might have benefited particular tenants or consumers, allowing all such persons the right to protest and seek judicial review could have imposed such a burden of work upon the Administrator as to weaken his efforts to achieve his primary objectives and thereby adversely affect the interests of the consuming public in general.[19]

[19] An idea of the multitude of work handled by the Administrator and of the additional burden that might be imposed upon him by granting tenants the right to administrative and judicial review may be gleaned from the following figures: As of March 31, 1946, well over 19,000,000 housing accommodations in 497 defense-rental areas were under rent control. As of this date, 1,340,955 landlords' petitions for rent increases had been disposed of. During the quarter ending March 31, 1946, there were almost 130,000 cases in which the rent directors acted on their own initiative to decrease rents. In the month of March 1946 alone, area rent offices received over 60,000 landlords' petitions for certificates of eviction. At this rate, on an annual basis, one out of every 20 tenants, or a total of about 800,000 families in housing under rent

Balancing this consideration against the good that might have been achieved by subjecting the Administrator to such judicial review, it is readily understandable why the Congress did not deem it advisable to give members of the consuming public such a right.[20] It was intended, instead, that the Administrator should be answerable to the Congress, the President, and the bar of public opinion.

The views which we advance herein are not inconsistent with the decisions of the Emergency Court of Appeals in *Illinois Packing Company* v. *Bowles,* 147 F. 2d 554, and *Illinois Packing Company* v. *Snyder,* 151 F. 2d 337; nor are they inconsistent with Section 24 of Revised Procedural Regulation No. 1, which provides that producers of agricultural commodities may assert by protest any right created by Section 3 (c) of the Emergency Price Control Act of 1942, as amended, for the benefit of such producers. It

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control could be affected by such petitions. During the past six months, almost 90% of the petitions for certificates of eviction have been granted by area rent offices. (Seventeenth Quarterly Report of the Office of Price Administration, March 31, 1946, p. 79 *et seq.*, H. Doc. No. 711, 79th Cong., 2d sess.)

[20] Consumers and tenants are, of course, free to pay less than the maximum prices and rents established by the Administrator. Similarly, the issuance of an eviction certificate to a landlord is not an order to the tenant to vacate. It merely permits the landlord to proceed to exercise whatever rights he may have at local law to evict the tenant, and is, therefore, no more than a determination by the Administrator that the eviction of the particular tenant from the specific property will not adversely affect rent stabilization.

should be noted that the *Illinois Packing Company* cases and Section 24 of Revised Procedural Regulation No. 1 involved sellers of commodities under price control.

In the *Illinois Packing Company* cases, the Emergency Court of Appeals held that a subsidy regulation issued by the Defense Supplies Corporation was a regulation under Section 2 of the Emergency Price Control Act; that a subsidy applicant could file a protest with the Defense Supplies Corporation and complain to the Emergency Court that he came within the class of persons for whom the subsidy was intended; and that to deprive him of the subsidy would be arbitrary and capricious. The Emergency Court recognized that the language of Section 203 (a) of the Act did not strictly fit that case, since the "Administrator" is the only person referred to therein as being authorized to entertain and dispose of protests. *Illinois Packing Company* v. *Bowles, supra.* But the court in that case held that the protest and review procedures in Sections 203 and 204 of the Act must follow the regulatory power, and that the phrase "subject to" in Section 203 (a) should, therefore, be read in that light. In spite of the fact that the subsidy regulation did not prohibit or require action of anyone, subsidy applicants, nevertheless, had to be given a right to protest if there was to be any judicial review of the subsidy regulations issued by the Defense Supplies Corporation. Since sub-

sidies constituted a method by which the Administrator could have satisfied the minimum requirements of the Act,[n] there was as much reason for subjecting a subsidy regulation issued under Section 2 of the Act to judicial review as there was for subjecting the basic maximum price regulation itself to such review. As the Emergency Court of Appeals pointed out in *Illinois Packing Company* v. *Snyder, supra* (151 F. 2d at 388–289),

> * * * it is inadmissible to put upon the phrase "any person subject to any provision" of a regulation under section 2 an interpretation which would make it impossible for anyone to invoke our jurisdiction in this type of case, especially one who, like complainant, is most immediately and directly prejudiced by the challenged provision of the subsidy regulation.

It is submitted that the *Illinois Packing Company* cases deal with a very special situation and are not authority for petitioners' view that a tenant should be permitted to protest the issuance by the Administrator of a certificate authorizing the landlord to pursue whatever rights he may have at local law to evict the tenant. The tenant's interest can be likened to that of a member of the public seeking to protest that a subsidy regulation is either too generous to the industry receiving the

[n] Subsidies were included with other income to sellers in determining whether a maximum price regulation was generally fair and equitable. Cf. *Heinz* v. *Bowles*, 150 F. 2d 546 (ECA), certiorari denied, 326 U. S. 719.

subsidy or that more subsidies should be paid in order to maintain a lower maximum price structure. Cf. *Massachusetts* v. *Mellon*, 262 U. S. 447.

Nor is Section 24 of Revised Procedural Regulation No. 1 authority for the position taken by the petitioners. Section 3 (c) of the Emergency Price Control Act, as amended, provides that no maximum price shall be established by the Price Administrator for commodities processed from agricultural commodities below a price which reflects certain minimum prices to the producers of such agricultural commodities. This limitation upon the Price Administrator's authority was imposed for the benefit of agricultural producers as sellers of their commodities. As in the *Illinois Packing Company* cases, if there was to be any judicial review to determine whether the Administrator had complied with the provisions of Section 3 (c), agricultural producers had to be permitted to protest regulations fixing maximum prices for commodities processed from agricultural commodities, in spite of the fact that such regulations did not prohibit or require any action on the part of such producers. Cf. *Stark* v. *Wickard, supra.* Certainly processors had no interest in protesting, and indeed had no right to protest, such regulations on the ground that the Administrator had not respected the rights specifically conferred upon agricultural producers by Section 3 (c) of the Act. *Allied Foods* v. *Bowles*, 151 F. 2d 449 (ECA).

Indeed, the *Illinois Packing Company* cases and Section 24 of Revised Procedural Regulation No. 1 further illustrate our view that the system of administrative and judicial review established by Sections 203 and 204 of the Act was intended by the Congress to be for the benefit of members of the business community upon whom the restrictions of the Act were imposed. Thus, they are not inconsistent with our view that the Price Administrator was regarded as the protector of the public interest, and as such subject not to judicial review, but only to the other restraints inherent in our form of government.

I

THE FACT THAT PETITIONERS WERE PERMITTED TO PARTICIPATE IN THE PROCEEDINGS BEFORE THE AREA RENT DIRECTOR DID NOT CONFER UPON THEM THE RIGHT TO PROTEST

As required by Revised Procedural Regulation No. 3, the purchasers of the proprietary leases to the housing accommodations occupied by petitioners filed with the area rent director their applications for certificates permitting them to pursue whatever remedies they had at local law to evict the petitioners. Section 1300.206 of the Procedural Regulation provides that in such case

> * * * the rent director may make such investigation of the facts involved in the petition or application, hold such conferences, and require the filing of such re-

ports, evidence in affidavit form or other material relevant to the proceeding, as he may deem necessary or appropriate for the proper disposition of the petition or application.

To aid the director in disposing of the applications, the petitioners were informed of their pendency and were advised that they might submit information concerning the applications.[22] Subsequently the area rent director, finding that a fair determination of the landlords' applications in this case would be expedited by the holding of an oral hearing, scheduled such a hearing, and petitioners were invited to present testimony.

Petitioners now argue that because they were given the right to present testimony in the hearing before the area rent director, they were made "parties" to the proceeding and thereby gained the right to protest the final order of the Ad-

[22] The general practice of the area rent offices is to inform tenants of all proceedings that might affect the maximum rents for the housing accommodations they occupy. Tenants are permitted to submit any information they may have with respect thereto. In some cases, tenants are even permitted to file applictaions for decreases in maximum rents. See Section 5 (c) of the Rent Regulation for Housing, *infra*, p. 41, and Section 1300.205 of Revised Procedural Regulation No. 3, *infra*, p. 40. Action on such applications lies wholly within the discretion of the area rent director. There is no provision for review, at the request of the tenant, by the Regional Administrator of the action of the area rent director on such applications. The area rent director is of course subject to general supervision by his superiors.

ministrator. The fact that petitioners presented testimony before the area rent director did not make them parties to the proceeding. As the court below stated (R 67) in commenting upon this procedure:

> This was doubtless wise administrative procedure which enabled the Administrator to become fully informed with respect to all the facts which might have any bearing upon the questions raised by the petitions * * *.

Petitioners' status in the proceeding before the rent director was essentially that of witnesses aiding the area rent director in the carrying out of his duties, and not that of parties.[23] Indeed, it will be observed, that if tenants otherwise have no right to protest, a holding that they acquire such a right merely by being allowed to appear to present relevant evidence would confront the Administrator with the alternatives of denying himself access to an important source of information or assuming a new administrative burden of great magnitude, the adoption of either of which would be detrimental to the effective administration of the Act.

[23] The fact alone that a person may be a party to an administrative proceeding does not give him a right to maintain an independent suit to set aside the order involved. *Sprunt & Son* v. *United States*, 281 U. S. 249.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the court below should be affirmed.

Respectfully submitted.

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APPENDIX

The pertinent provisions of the Emergency Price Control Act of 1942 (56 Stat. 23), as amended by the Stabilization Extension Act of 1944[1] (58 Stat. 632) (50 U. S. C. App., Supp. V, 901 et seq.), are as follows:

> SEC. 2. (b) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accom-

[1] Roman type is used to indicate text which has not been changed since original enactment or issuance and italics are used to indicate amendments.

modations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs *within such defense-rental area.*[2] In designating defense-rental areas, in prescribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regulations and orders, the Administrator shall, to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area. * * *

(c) Any regulation or order under this section may be established in such form and manner, may contain such classifications and differentiations, and may provide for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act. *Under regulations to be prescribed by the Administrator, he shall provide for the making of*

[2] Added by sec. 102 of the Stabilization Extension Act of 1944.

individual adjustments in those classes of cases where the rent on the maximum rent date for any housing accommodations is, due to peculiar circumstances, substantially higher or lower than the rents generally prevailing in the defense-rental area for comparable housing accommodations, and in those classes of cases where substantial hardship has resulted since the maximum rent date from a substantial and unavoidable increase in property taxes or operating costs.[3] Any regulation or order under this section which establishes a maximum price or maximum rent may provide for a maximum price or maximum rent below the price or prices prevailing for the commodity or commodities, or below the rent or rents prevailing for the defense-area housing accommodations, at the time of the issuance of such regulation or order.

(d) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

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[3] Added by sec. 102 of the Stabilization Extension Act of 1944.

SEC. 3. (c) No maximum price shall be established or maintained for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to producers of such agricultural commodity a price for such agricultural commodity equal to the highest price therefor specified in subsection (a).

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder.

* * * * *

(d) Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent.

SEC. 203. (a) *At any time after the issuance of any regulation or order under section 2, or in the case of a price schedule, at any time after the effective date thereof specified in section 206,*[4] any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections.[5] Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing,[6] the Adminis-

[4] As amended by sec. 106 of the Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206."

[5] As amended by sec. 106 of the Stabilization Extension Act of 1944. At this point the following language was stricken out: "At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days."

[6] As amended by sec. 106 of the Stabilization Extension Act of 1944. At this point the following language was stricken out: "or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later."

trator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint or to remand the proceeding: *Provided*, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. * * *

SEC. 205 (e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, *within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation.*[7] For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; *and the word*

[7] As amended by sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "* * * bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court."

"overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. * * *

Revised Procedural Regulation No. 1 (7 F. R. 8961) (Procedure for the issuance, adjustment, amendment, protest and interpretation of maximum price regulations):

> SEC. 24. *Right to protest.* Any person subject to any provision of a maximum price regulation may file a protest against such provision in the manner set forth below. A person is, for the purposes of this revised procedural regulation, subject to a provision of a maximum price regulation only if such provision prohibits or requires action by him, *Provided, however,* That a producer of an agricultural commodity shall be considered to be subject to a maximum price regulation for the purpose of asserting any right created by section 3 (c) of the Emergency Price Control Act of 1942 or section 3 of the Stabilization Act of 1942 (Pub. Law 729, 77th Cong.), as amended by the Stabilization Extension Act of 1944 (Pub. Law 383, 78th Cong.), for the benefit of producers of such an agricultural commodity. Any protest filed by a person not subject to the provision protested, or otherwise not in accordance with this revised procedural regulation, may be dismissed by the Administrator.

Revised Procedural Regulation No. 3 (8 F. R. 526) (Procedure for adjustments, amendments, protests and interpretations under rent regulations):

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* Added by sec. 108 (b) of Stabilization Extension Act of 1944.

SUBPART A—LANDLORDS' PETITIONS AND TENANTS' APPLICATIONS

* * * * *

§ 1300.205 *Tenants' applications.* All tenants' applications provided for by any maximum rent regulation shall be filed with the rent director for the defense-rental area within which the housing accommodations involved are located. The application shall be filed on forms prescribed by the Administrator and pursuant to directions set forth on such forms. Action upon any tenant's application shall be within the discretion of the rent director and the procedure thereon shall be the same as in proceedings initiated by the rent director pursuant to provisions of a maximum rent regulation authorizing such action.

§ 1300.206 *Investigation of petitions and applications.* Upon the filing of a petition or application pursuant to the provisions of this regulation, the rent director may make such investigation of the facts involved in the petition or application, hold such conferences, and require the filing of such reports, evidence in affidavit form or other material relevant to the proceeding, as he may deem necessary or appropriate for the proper disposition of the petition or application.

* * * * *

SUBPART C—PROTESTS

General Provisions

§ 1300.216 *Right to protest.* Any landlord subject to any provision of a maximum rent regulation, or of an order issued under § 1300.210 of this regulation, or of an order entered under section 5 (d) of any maxi-

mum rent regulation, or of an order entered by the rent director under § 1300.207 of this regulation, may file a protest in the manner set forth below. A landlord is, for the purposes of this regulation, subject to a provision of a maximum rent regulation or of an order only if such provision prohibits or requires action by him. Any protest filed by a landlord not subject to the provision protested, or otherwise not in accordance with the requirements of this regulation, may be dismissed by the Administrator.

Rent Regulation for Housing for New York City Defense-Rental Area (8 F. R. 13914) as amended:

SEC. 5. *Adjustments and other determinations.* In the circumstances enumerated in this section, the Administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required. * * *

* * * * * *

(c) *Grounds for decrease of maximum rent.* The Administrator at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable, only on the grounds that:

(1) *Rent higher than rents generally prevailing.* The maximum rent for housing accommodations under paragraph (c), (d), (e), or (g) of section 4 is higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on March 1, 1943.

(2) *Substantial deterioration.* There has been a substantial deterioration of the housing accommodations other than ordinary

wear and tear since the date or order determining its maximum rent.

(3) *Decrease in services, furniture, furnishings or equipment.* There has been a decrease in the minimum services, furniture, furnishings or equipment required by section 3 since the date or order determining the maximum rent.

(4) *Special relationship between landlord and tenant or peculiar circumstances.* The rent on the date determining the maximum rent was materially affected by the blood, personal, or other special relationship between the landlord and the tenant, or by peculiar circumstances, and as a result was substantially higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on March 1, 1943.

(5) *Varying rents.* The rent on the date determining the maximum rent was established by a lease or other rental agreement which provided for a lower rent at other periods during the term of such lease or agreement: *Provided,* That this subparagraph shall not apply to cases covered by paragraph (c) (8) of this section.

(6) *Seasonal rent.* The rent on the date determining the maximum rent was substantially higher than at other times of year by reason of seasonal demand, or seasonal variations in the rent, for such housing accommodations. In such cases the Administrator's order may if he deems it advisable provide for different maximum rents for different periods of the calendar year.

(7) *Substantial decrease in occupancy.* There has been a substantial decrease in the number of subtenants or other occu-

pants since an order under paragraph (a) (8) of this section.

(8) *Rent concession.* The rent on the date determining the maximum rent was established by a lease or other rental agreement for a period of occupancy of one or more years, which provided for a rent concession during such period of occupancy in the form of either a rent-free period or an abatement of rent.

(9) *Modification or elimination of necessity for increase under section 5 (a) (12).* There has been a modification or elimination of the necessity for the increase in the maximum rent granted under paragraph (a) (12) of this section, since the order issued under that paragraph.

* * * * *

SEC. 6. *Removal of tenant—(a) Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, unless:

(1) *Tenant's refusal to renew lease.* The tenant, who had a written lease or other written rental agreement, has refused upon demand of the landlord to execute a written

extension or renewal thereof for a further term of like duration, or if the lease was for a term of less than one year but more than three months and was nonseasonal in character, for a term of not more than one year, for a rent not in excess of the maximum rent, but otherwise on the same terms and conditions as the previous lease or agreement, except insofar as such terms and conditions are inconsistent with this regulation; or

(2) *Tenant's refusal of access to landlord.* The tenant has unreasonably refused the landlord access to the housing accommodations for the purpose of inspection or of showing the accommodations to a prospective purchaser, mortgagee, or prospective mortgagee, or other person having a legitimate interest therein: *Provided, however,* That such refusal shall not be ground for removal or eviction if such inspection or showing of the accommodations is contrary to the provisions of the tenant's lease or other rental agreement; or

(3) *Violating obligation of tenancy or committing nuisance.* The tenant (i) has violated a substantial obligation of his tenancy, other than an obligation to pay rent, and has continued, or failed to cure, such violation after written notice by the landlord that the violation cease, or (ii) is committing or permitting a nuisance or is using or permitting a use of the housing accommodations for an immoral or illegal purpose; or

(4) *Subtenants on expiration of tenant's lease.* The tenant's lease or other rental agreement has expired or otherwise terminated, and at the time of termination the occupants of the housing accommodations are subtenants or other persons

who occupied under a rental agreement with the tenant, and no part of the accommodation is used by the tenant as his own dwelling; or

(5) [Revoked]

(6) *Occupancy by landlord.* The landlord owned, or acquired an enforceable right to buy or the right to possession of, the housing accommodations prior to November 1, 1943, and has an immediate compelling necessity to recover possession of such accommodations for use and occupancy as a dwelling for himself, or has served during the period of the war emergency in the armed forces of the United States and in good faith seeks possession for his own occupancy. If a tenant has been removed or evicted under this paragraph (a) (6) from housing accommodations, the landlord shall file a written report on a form provided therefor before renting the accommodations or any part thereof during a period of six months after such removal or eviction.

(b) *Administrator's certificate*—(1) *Removals not inconsistent with act or regulation.* No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the act or this regulation and would not be likely to result in the circumvention or evasion thereof. The certificate shall authorize the pursuit of local remedies at the expiration of six months after the date of filing of the

petition unless the Area Rent Director has determined that a three months' period is adequate for the purposes of the act in this area in issuing certificates under section 6 (b) (2), in which event the applicable period shall be three months. Within the discretion of the Area Rent Director the certificate may authorize the pursuit of local remedies for the removal or eviction of the tenant at a time less than six or three months, as the case may be, after the date of the filing of the petition if the petitioner establishes that unusual hardship would otherwise result, or that a lesser period in the particular case is consistent with the purposes of the regulation and the act.

(2) *Occupancy by purchaser.* A certificate shall be issued authorizing the pursuit of local remedies to remove or evict a tenant of the vendor, for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after November 1, 1943, only as provided in this paragraph (b) (2).

(i) Where the Administrator finds that the payment or payments of principal made by the purchaser aggregate twenty percent or more of the purchase-price, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law. Except as herein provided and unless the Area Rent Director shall determine that a three months' period is adequate for the purposes of the act in this defense-rental area the certificate shall authorize the pursuit of local remedies at the expiration of

six months after the date of filing of the petition * * *.

The payment or payments of principal may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in the event the Administrator denies a petition for a certificate.

Any payments of principal made from funds borrowed for the purpose of making such payments, shall be excluded in determining whether twenty percent of the purchase price has been paid, unless the Administrator finds that the inclusion of such payments is consistent with the purposes of this paragraph (b) (2) and would not be likely to result in the circumvention or evasion thereof.

Where property other than the housing accommodations which are the subject of the purchase is mortgaged or pledged to the vendor to secure any unpaid balance of the purchase price, the payment requirement shall be deemed satisfied if the value of such security, plus any payments of principal made from funds not borrowed for the purpose of making such principal payments, equal twenty percent or more of the purchase price.

(ii) Where the Administrator finds (a) that equivalent accommodations are available for rent into which the tenant can move without substantial hardship or loss, or (b) that the vendor has or had a substantial necessity requiring the sale and that a reasonable sale or disposition of the accommodations could not be made without the removal or eviction of the tenant, or (c) that other special hardship would result, a certificate may be issued although less than twenty percent of the purchase

price has been paid and may authorize the vendor or purchaser to pursue his remedies for removal or eviction of the tenant at the expiration of a period shorter than the maximum waiting period which would otherwise be imposed under this section.

(iii) The payment of twenty percent or more of the purchase price shall not be a condition to the issuance of a certificate under this paragraph (b) (2) where the purchaser has obtained a loan to be used in purchasing the housing accommodations which is guaranteed in whole or in part by the Administrator of Veterans' Affairs pursuant to the provisions of Title III of the Servicemen's Readjustment Act of 1944.

(3) *Occupancy by purchaser of stock in a cooperative.*

(i) This paragraph (b) (3) applies to the issuance of a certificate for occupancy of housing accommodations in a structure or premises owned or leased by a cooperative corporation or association (hereinafter called "cooperative") by a purchaser of stock or other evidence of interest (hereinafter called "stock") in such cooperative who is entitled by reason of ownership of such stock to possession of such housing accommodations by virtue of a proprietary lease or otherwise. It applies only to the issuance of a certificate authorizing the pursuit of local remedies to remove or evict one who was a tenant of the housing accomodations at the time of such purchase.

(ii) Where the cooperative was organized as such or acquired its title or leasehold interest in the structure or premises on or after February 17, 1945, or the effective date of regulation, whichever is the later, or where the purchased stock originally was

issued on or after that date, no certificate shall be issued, unless on such date the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to issue a certificate, or unless, at the time of issuance of the certificate, stock in the cooperative has been purchased by persons who are then tenants of at least 80% of the dwelling units in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises.

(iii) Where the cooperative was organized and acquired its title or leasehold interest in the structure or premises before February 17, 1945, or the effective date of regulation, whichever is the later, and on that date stock in the cooperative allocated to more than 50% of the dwelling units in the structure or premises was held by the cooperative, or by another person owning more shares than those allocated to a single dwelling unit, or both, no certificate shall be issued for occupancy by a purchaser of stock so held or owned on such date, unless, at the time of issuance of the certificate, stock in the cooperative is owned or has been purchased by persons who are then tenants of at least 80% of the dwelling units in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises.

(iv) In all other cases, including those excepted from paragraph (b) (3) (ii) and (iii), the issuance of a certificate shall be pursuant to paragraph (b) (2).

(4) *Change of intention.* No landlord who has obtained a certificate relating to eviction under this section 6 (b) shall use

the certificate in connection with any action to remove or evict a tenant unless such removal or eviction is sought for the purpose specified in the certificate.

Any landlord whose intentions or circumstances so change that the premises, whose possession is sought, will not be used for the purpose specified in the petition or certificate shall immediately notify the Area Rent Director in writing and surrender the certificate, if issued, for cancellation.

* * * * *

(d) *Notices required*—(1) *Notices prior to action to remove tenant.* Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant and the facts necessary to establish the existence of such ground. A written copy of such notice shall be given to the area rent office within 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations by court process or otherwise, on any ground other than non-payment of rent, unless at least ten days prior to the time specified for surrender of possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or eviction to the tenant and to the area rent office, stating the ground under this section upon which such removal or eviction is sought, the facts necessary to establish the existence of such ground, and specifying the time when the tenant is required to surrender possession.

The provisions of this paragraph (d) (1)

shall not apply if the eviction is pursuant to the terms of a certificate issued by the Administrator under the provisions of paragraph (b) of this section.

(2) *Notices at time of commencing action to remove tenant.* At the time of commencing any action to remove or evict a tenant, including an action based upon nonpayment of rent, the landlord shall give written notice thereof to the area rent office stating the title of the case, the number of the case where that is possible, the court in which it is filed, the name and address of the tenant, and the ground under this section on which removal or eviction is sought.

(e) *Local law.* No provision of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under the local law.

Statement of Reasons Accompanying Amendment 17 to the Rent Regulation for Housing for the New York City Defense-Rental Area (Pike and Fischer, *OPA Service,* Vol. 14, pp. 200:393–T, U, and V) *

These amendments add a new paragraph to Section 6 (b) of the Rent Regulations for Housing applicable to evictions in connection with the sale of stock in a cooperative corporation or association. This is a form of organization whereby each stockholder is entitled, by reason of his ownership of stock, to occupy a dwelling unit in an apartment building or other multiple-unit structure or premises owned by the cooperative corporation.

With certain exceptions the amendments provide that no certificate shall be issued

* Pages T, U, and V of Volume 14 were distributed only to the Office of Price Administration.

for occupancy by a purchaser of stock in the cooperative (1) where the cooperative was organized on or after February 17, 1945, the effective date of the amendment, or (2) where the cooperative acquired its title or leasehold interest in the structure or other premises on or after that date, or (3) where the purchased stock originally was issued on or after that date. (In areas placed under control after February 17, 1945, the decisive date will be the effective date of the regulation.) The amendments recognize an exception where on the decisive date the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to issue a certificate.

Where the cooperative was organized and acquired its title before February 17, 1945, the issuance of certificates is made to depend in part upon the ownership of the stock in the cooperative on that date. If stock allocated to more than 50% of the dwelling units was held by the cooperative, a certificate generally, will not be issued for occupancy by a purchaser of such stock. This is true also where this amount of stock was owned on February 17, 1945, by some person other than the cooperative who owned more shares than those allocated to a single dwelling unit, or where the combined holdings of the cooperative and such other person represented stock allocated to more than 50% of the dwelling units.

In any of these cases, however, the amendments permit the issuance of certificates if, at the time of such issuance, stock in the cooperative is owned or has been purchased by persons who are then tenants of at least 80% of the dwelling units.

This permits tenants of an apartment building or other multiple-unit premises to voluntarily organize a cooperative even though a small proportion of the tenants do not join in the plan.

In all cases where the issuance of a certificate is permissible, the decision is governed by Section 6 (b) (2) in its present form. The determination under Section 6 (b). (2) will take into account whether the organization is a true cooperative.

In recent months the problem of evictions and potential evictions in connection with the sale of stock in cooperative housing corporations has reached serious proportions. Apartment houses and other multiple-unit premises are being sold to cooperative corporations. These corporations in turn sell stock in the corporation which entitles the purchaser to a "proprietary lease" of a dwelling unit in the structure. In selling stock in the cooperative, tenants usually are first approached. They are under heavy pressure to purchase stock because the alternative is likely to be eviction in favor of the ultimate purchaser of the stock. If the stock is not purchased by a tenant, it is then sold to another person who obtains a proprietary lease of the tenant's dwelling unit and seeks possession of that unit for personal occupancy.

Substantially the same type of transaction is taking place by turning an ordinary real estate corporation which owns an apartment building into a cooperative corporation. The present owners of stock in such a corporation are selling stock under a cooperative plan whereby the purchaser becomes entitled to a proprietary lease. Again the transaction is likely to result either in the forced sale of the stock to

the present tenant or his eviction in favor of a third party purchaser of the stock.

In the past cooperative housing corporations were virtually unknown in most defense-rental areas. Since rent control there has been a tendency to make more frequent use of the device and there is every indication that this will accelerate.

In a few areas numerous cooperative housing corporations were organized in past years. During the depression many stockholders defaulted on the payments under their proprietary leases and the stock was taken back by the corporation. In some instances the stock was bought up by a third party for speculative purposes. Today many of these buildings are cooperative in name only. Some units still are occupied by tenant-stockholders but many if not most of the units are occupied by tenants renting directly from the corporation or other holder of stock. During recent months, as the housing shortage has become more acute, the cooperative corporations or other owners of this stock have begun to sell it to purchasers who become entitled to proprietary leases. The amendment prohibits eviction in connection with the sale of such stock only where at the present time the cooperative cannot be considered to have the essential characteristics of such an organization. Where the cooperative is one in name only and not in substance, as certainly is true where stock allocated to a majority of the dwelling units is held by the corporation or by another person, or both, the Administrator considers that the same treatment should be accorded as is given to a newly organized cooperative.

Since multiple-unit structures are involved in all these cooperative plans, the

carrying out of the plans means that there will be a mass eviction of tenants in the structure; or as an alternative the tenants will be forced to buy an interest which they may not want in order to retain occupancy. The Administrator deems these consequences inconsistent with effective rent control.

Such an eviction is not for substitution in occupancy of a true owner of the accommodations. The tenant-stockholder's interest in the dwelling unit he occupies has most of the characteristics of an ordinary leasehold interest. Under some plans the proprietary lease is for a long term, such as ninety-nine years, while under others it is for a relatively short term, such as one, three, or five years, with an option in the tenant to renew. Where long-term leases are used there frequently is a provision enabling the tenant to terminate the lease prior to expiration of the term. Thus, the tenant usually is in a position to give up his right to occupy the premises and escape any further liability on the obligations which an owner assumes when he acquires ownership of property.

The proprietary leases contain many of the clauses customarily found in ordinary leases. They are called leases and the tenant is referred to in the instrument as a tenant or lessee. Payments made under the leases are called rent. The leases prohibit assignment or subletting without consent of the lessor or perhaps of a certain percentage of the stockholders. The lessor is given the right to terminate the lease on default by the lessee in his obligations thereunder in much the same manner provided in the ordinary lease. The leases frequently provide that the lessor may use the summary proceedings which are available

to evict an ordinary tenant. An option is given the lessor to terminate the lease under circumstances inconsistent with a substantial property interest in the lessee.

The interest of the tenant-stockholder is so like that of an ordinary tenant as to present serious possibilities of evasion of the rent regulations. In areas where the housing shortage is acute a person will be willing to pay a substantial sum to buy stock in a cooperative simply as a means of obtaining or retaining shelter. Under such circumstances the amount paid for the stock actually is payment for occupancy of the accommodations.

In view of the dangers of evasion of the rent ceilings through such transactions and of the mass evictions which are likely to occur through the formation of new cooperatives and the revival of existing ones, it is the judgment of the Administrator that the issuance of the present amendments is necessary and proper in order to effectuate the purposes of the Emergency Price Control Act.

No provisions which might have the effect of requiring a change in established rental practices have been included in the rent regulations unless such provisions have been found necessary to achieve effective rent control and to prevent circumvention or evasion of the rent reguations and the Act. To the extent that the provisions of the rent regulations compel or may operate to compel changes in established rental practices, such provisions are necessary to prevent circumvention or evasion of the rent regulations and the Act.

Issued this 16th day of February 1945.

CHESTER BOWLES,
Administrator.

U. S. GOVERNMENT PRINTING OFFICE: 1945

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 1075.

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. CLARENCE KASKEL, MORTON H. BARON, ROBERT HERMANN, SAMUEL OGUS, CHARLES MASLOW, GEORGE WILLETT, HARRY WIENER, CHARLES GOLDMAN, DAVID RUDBERG, WILLIAM I. HOHAUSER and SIDNEY MAYBAUM,

Petitioners,

vs.

PAUL A. PORTER, Price Administrator.

LANDLORDS' BRIEF, *AMICI CURIAE.*

LOUIS L. TETELMAN,
Attorney for Landlords, Amici Curiae.

THE COURT PRESS, N. Y. C.

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vs.

PAUL A. PORTER, Price Administrator.

LANDLORDS' BRIEF, *AMICI CURIAE.*

Statement.

Upon written consent of the parties, this brief, *amici curiae,* is filed on behalf of the landlords of the respective apartments in the building occupied by the petitioners as tenants.

Landlords wish to urge that this case does not present any question of sufficient importance or substance to warrant the granting of certiorari.

Facts.

Fifty-five Corporation, organized under New York laws, is the owner in fee of premises No. 55 Central

Park West, New York City (R. 3), on which stands a nineteen story residential apartment house, some of which apartments are occupied by petitioners (R. 4). These are luxury apartments in one of the finest residential areas of the city. Prior to February 17, 1945, two individuals, Victor M. Earle and Alexander B. Carver, planned to sell their entire capital stock holdings in Fifty-five Corporation cooperatively to any persons desirous of acquiring some of the apartments for their own use through proprietary leases (R. 7). At that time the Rent Regulation for Housing in the New York City Defense Rental Area, 8 F. R. 13914, did not contain any provision with respect to the percentage of total dwelling units in the cooperative which had to be purchased or held in order to obtain a certificate relating to eviction under Sec. 6(b)(2) of such regulation. On February 17, 1945, and while the cooperative was in process of organization, but before the landlords herein purchased their allotted stock and proprietary leases, the Rent Regulation was amended by the addition of Subparagraph (3) to Sec. 6(b), 10 F. R. 1973, so as to permit the issuance of a certificate, among other things, only when "* * * stock in the cooperative has been purchased by persons who are then tenants of at least 80% of the dwelling units in the structure * * *", Sec. 6(b)(3)(ii). The amendment left open the right to a certificate under 6(b)(2) if "* * * the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to issue a certificate." Sec. 6(b)(3)(ii). Accordingly, Messrs. Earle and Carver requested a finding of hardship, resulting in the issuance of an interpretive letter by the Administrator on March 23, 1945, exempting the cooperative from the restrictions of Sec.

6(b)(3) (R. 8). In reliance on the Administrator's interpretive letter and without any knowledge whatsoever of anything that might have transpired before its issuance and in complete good faith and for value landlords herein purchased their respective apartments in the cooperative which went into effect on June 1, 1945.

Preliminary to the institution of dispossess proceedings in the local Court to obtain possession of their apartments upon termination of the tenants' leases, landlords filed their petitions in the Area Rent Office pursuant to Sec. 6(b)(2) of the regulation for a certificate authorizing each of them "to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law" (R. 9). The Area Rent Director ordered a hearing pursuant to the Revised Procedural Regulations 3, 9 F. R. 10484, at which tenants were invited to be and were present and represented by counsel and where a comprehensive record was made. The Area Rent Director denied the applications. Landlords thereupon filed a petition for review under the Revised Procedural Regulations with the Regional Director, who affirmed the denial below. Landlords thereupon filed their protest under the Revised Procedural Regulations and Sec. 203(a) of the Emergency Price Control Act with the Administrator in Washington, D. C. By order made on September 28, 1945, he granted the protest, reversed the decisions below and issued the certificates relating to eviction. The Administrator's opinion accompanying his order (reported, *In the Matter of Gordon et al.*, 3 Opinions & Decisions 3301, 9/28/45, Pike & Fisher—OPA Opinions and Decisions and to which the Court is respectfully referred) rejected both the charges of fraud

and misrepresentation levelled at the original stock owners relative to the antecedent interpretive letter and the claim of non-compliance with the regulations directed at the purchaser of the stock relative to their applications for the certificate.

Tenants then filed their protest with the Administrator, which was dismissed, followed by their filing of a complaint with the United States Emergency Court of Appeals, which was also dismissed, both for lack of jurisdiction (R. 10, 88).

Reasons for Denying the Writ.

Petitioners have neither been denied due process nor deprived of any basic right.

The fundamental purpose of the Emergency Price Control Act is declared in the Act and was fully considered in *Bowles* v. *Willingham*, 321 U. S. 503, where the Constitutionality of the Act was reaffirmed, following *Yakus* v. *United States*, 321 U. S. 414. To prevent inflation in our complex economy, Congress delegated the administration of the Act to an Administrator of the Office of Price Administration. To insure compliance with the commands of the statute and all rules, regulations and orders, Congress imposed civil and criminal sanctions. Enforcement was the keystone of the arch of the control structure. See, Inflation Control: The Enforcement Job, Paul L. Ross, Lawyers Guild Review, Vol. V, No. 6 (Nov.-Dec. 1945). The tenant, secure in his rights at local law, was not subjected to any restraints or sanctions. He was free to do as he pleased.

Sec. 203(a) says, "* * * any person subject to any provision of such regulation, order, or price schedule

may, in accordance with regulations to be prescribed by the Administrator file a protest * * *."

Nowhere under the Rent Regulation for Housing in the New York City Defense Rental Area, 8 F. R. 13914, is a tenant required to obey any provision. The regulation was framed as Congress intended that it should be.

> "Section 203(a) is designed to provide the advantages of a hearing, in a manner consistent with the need for expeditious determinations, to all persons who are required to obey the provisions of regulations or orders under Section 2." Sen. Rep. No. 931, 77th Cong. 2d Sess. (1942) 22.

The same report, after describing the procedure, continues:

> "Thus any person subject to any provision of any regulation or order issued by the Administrator under Section 2 has a right to object to such provision and a right to have his objections considered."

See also Sec. 204 of the Act, entitled, "Review" which is interlocked with Sec. 203.

Thus, it can be concluded that Congress intended to place a protective shield, through protest proceedings, around those required to comply with a possibly unreasonable or invalid regulation or order.

Reflective of such intention by the Congress are the statements contained in *Collins* v. *Porter*, No. 393, decided by this Court in the October Term 1945, April 22, 1946, wherein it was said:

> "His contention that the petitioner is not a 'person subject to - - - (the) regulation' Sec. 203(a)

> is amply refuted by the continuing liability of the petitioner, *United States* v. *Hark*, 320 U. S. 531."

and in *Thomas Paper Stock Co.* v. *Porter*, No. 578 and No. 67, decided by this Court in the October Term 1945, April 22, 1946, wherein it was said at the last page:

> "* * * that (meaning case No. 578) we now reverse with the result that disregard of the regulation based on standardized prices for waste-paper not 'determined' by the Administrator prior to September 11, 1943, does not subject petitioners to the penalties of the Price Control Act."

To say that Congress intended to extend the right to protest to every ultimate consumer and every tenant in a defense-rental area (millions of them) would be tantamount to asserting that Congress sought to nullify the purposes of the Act.

The reasoning in:

Buka Coal Company v. *Brown*, 133 F. 2d 949;

as reiterated in

Horns v. *Bowles*, 151 F. 2d 191;

relative to the original interpretation of the words "subject to" and the nature of protest procedure applies. In the latter case, at page 194, the Court said:

> "'In *Thomas Paper Stock Co.* v. *Bowles*, 1944, 148 F. 2d 831, 837, we said that the primary purpose of the protest procedure provided in

Sec. 203 of the Act,' 50 U. S. C. A. Appendix, Sec. 923,' is to afford to a person subject to a provision of a regulation or order which he believes to be invalid the opportunity to present his objections thereto to the Administrator and to request its modification or rescission *in order that he may not have to obey it in the future.*" (Italics ours.)

The Appellate Division of the Supreme Court, First Department, New York, had occasion to consider Sec. 203(a) in connection with a suit instituted in the Supreme Court by three of the petitioners herein to restrain their respective landlords from prosecuting their summary proceedings in the local Municipal Court to evict them following the issuance of the certificates by the Administrator:

> *Werth et al.* v. *Gordon et al.*, 270 App. Div. 255, 59 N. Y. S. 2d 99 (motion for leave to appeal to Court of Appeals denied 270 App. Div. 753).

In reversing the lower Court which had granted an injunction *pendente lite*, the Court said:

> "* * * We might add that it is even doubtful that the plaintiffs have any standing before the Emergency Court of Appeals. Under the OPA legislation the only person who may appeal to the Emergency Court of Appeals is one who is aggrieved by the denial of his protest by the Administrator, and the only person who may file a protest with the Administrator is one who is 'subject to any provisions' of a regulation or order of the OPA (Sec. 203(a), Emergency Price Control Act, Tit. 50 U. S. C. A. Appendix Sec.

923(a)). As the landlord, rather than the tenant, is subject to the provisions of the OPA, the plaintiffs would appear not to have any standing to protest the Administrator's order or appeal to the Emergency Court of Appeals."

Pursuant to the delegation of power in Sec. 203(a) of the Act, the Administrator promulgated Revised Procedural Regulation No. 3, 9 F. R. 10484, prescribing rules for adjustments, amendments, protests and interpretations under the maximum price regulations. Nothing in this regulation impinges upon or deprives a tenant of any right. Since landlord had to comply with the rent regulations he was the one accorded the right of protest, Sec. 1300.216. As an aid to the Administrator in making his investigations and determinations, tenants were permitted to present applications, but they were entertainable only at the discretion of the Administrator. Sec. 1300.205. The procedural regulation does not arrogate to itself any greater right or power than is permitted by the Act itself.

In:

National Labor Relations Board v. *Mackay Co.*, 304 U. S. 333, 351,

it was said:

"The Fifth Amendment guarantees no particular form of procedure; it protects substantial rights."

Petitioners, in support of their contention that a tenant is subject to the Act, on page 17 of their petition, snatch from its context the words "to those

affected" from the opinion of the late Mr. Chief Justice Stone in:

Yakus v. *United States*, 321 U. S. 414, 433,

to indulge a connotation not intended by the opinion. When the Chief Justice wrote that opinion he wrote it in the setting of the Emergency Price Control Act. That Act imposes penalties for violation of its provisions or regulations or orders thereunder. It imposes penalties solely on persons prohibited from acting or required to act. These are the persons affected —not tenants who cannot violate. It is submitted that there is no substance whatever to the argument along this score. True, the acts of the Administrator are subject to review, but only such acts as the statute intended to be reviewed, not every act.

Petitioners, in further support of the latter contention, at top of page 19 of the petition quote from one of the stated policies in House Bill No. 5990:

> "(11) the protection of the interests of those subject to the Act by providing procedure for administration and review."

The significance, if any, of this quotation would appear to be dissipated since the conference agreement between the Senate and the House "omits the purposes of the House bill described above in * * * (11)" (p. 661).

On pages 19, *et seq.*, petitioners quote from certain statements made in Congress at the time of the consideration of the enactment of the Emergency Price Control Act. When Congressman Steagall stated that "The provision also gave anybody dissatisfied with an order, ceiling or regulation of the Administrator the right to appear and protest the action of

the Administrator", he had reference to anybody within the ambit and provisions of the Emergency Price Control Act. He had reference to the terms of the Act, that is to say, persons "subject to" the Act.

On page 20, petitioner quotes a statement by Congressman Pheiffer of New York, whereas the record reveals that Congressman Williams of Missouri made it. The same observation as to Congressman Steagall's statement, *supra*, applies to this one.

Petitioners' contention, that the Act conferred a vested right upon them as tenants, is well answered by the learned opinions of Chief Judge Maris (R. 74) and Judge Magruder (R. 78) in the United States Emergency Court of Appeals.

Every substantive possessory right has been retained by the tenant.

The most that petitioners can say is, that because of the restriction imposed by the regulation upon the landlord through the creation of the defense rental area, the time when the landlord could institute his eviction proceedings has been extended until he shall have obtained a certificate or the defense rental area abolished. This is a procedural or remedial aspect, at most, not substantive.

Bowles v. *Willingham*, 321 U. S. 503, 519,

has determined that the Act did not clash with the Fifth Amendment because it did not provide for a hearing to landlords in advance of the administrative creation of a defense rental area. Certainly, a tenant, who is not subject to the civil and criminal sanctions of the Act should not be heard to complain if the defense rental area is eliminated without notice to him.

Mr. Justice Rutledge in his concurring opinion in *Bowles* v. *Willingham*, stated at page 522:

> "* * * The power to specify defense rental areas, rather than amounting to an excess of permissible delegation, is actually a limitation upon the administrator's authority, restricting it to regions where the facts, not merely his judgment, make control of rents necessary both to keep down inflation and to carry on the war activities concentrated in them."

Since the Administrator has the power to further attenuate his sway over defense rental areas through exceptions in the regulations, as ruled in

> *Taylor* v. *Brown*, 137 F. 2d 654, certiorari denied 320 U. S. 787,

it would follow that the time when and the circumstances where he so acts should be solely his concern.

Sec. 4(d) of the Act provides:

> "Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodation for rent."

This evidences a Congressional intent to fully preserve the landlord's possessory right, rather than grant any greater right to the tenant than he had at local law in the first instance.

As decided in:

> *Snyder* v. *Reshnik*, 131 Conn. 252, 38 A. 2d 803,

quoted in the dissenting opinion of Judge McAllister (R. 85, 86), and page 33 of the petition, under local

law the Courts insist upon proof by the landlord of his good faith in obtaining the certificate of eviction for his own occupancy. So that, the tenant is not only protected by the Administrator standing guard over the tenants and ultimate consumers in his stupendous task of endeavoring to stabilize the economy, but the tenant is further protected by the local Courts. The rule in *Snyder* v. *Reshnik*, above, is applied in the New York Courts.

The New York Courts further protect the tenant through the granting of stays of execution of the warrant of eviction in meritorious cases (Sec. 1436-a Civil Practice Act, Laws of 1930, Chapter 820). It would therefore appear unnecessary for the Federal Government to extend its authority over a domain well capable of protecting the possessory rights of the tenant, *i. e.*, over the right to possession of property by a dweller where the state has ample means and power to do so.

The petition reiterates observations of alleged elements of fraud and misrepresentation as though they were an issue which might prompt this Court to entertain this petition in the absence of a meritorious point of substance or importance. In some places the petitioners accuse the purchasers of having indulged in fraud and misrepresentation either in procuring the original interpretive letter from the Administrator, or the later certificates of eviction. On page 3, paragraph 5, petitioners say "that the purchasers' application to evict petitioners was based on fraud and misrepresentations." On page 26 petitioners say "in the face of contentions that such order was procured by fraud." In other places petitioners imply similar accusations;—petition page 5, line 24; page 24, line 18 *et seq.*, page 29, line 23. The allegations of fraud

and misrepresentation were directed at the original owners of the stock when they obtained the original interpretive letter. As to that, the Administrator ruled that there was no fraud. He stated that the landlords herein purchased their stock and acquired their proprietary leases in reliance upon the interpretive letter issued by the Administrator. See 3 Opinions and Decisions 3301, 9/28/45 Pike & Fisher, OPA Opinions and Decisions.

Petitioners on page 9 of the petition state in reference to the opinion of Judge Magruder that "The concurring opinion, rendered 'with some hesitation' ". Judge Magruder concurred in the decision with a very strong opinion and did not render his opinion "with some hesitation". He said "with some hesitation I concur in the opinion by Chief Judge Maris" (R. 78).

The dissenting opinion of Judge McAllister (R. 84) makes reference to helplessly stricken invalids, newly returned veterans of the war, children and aged people who would suffer by the issuance of the certificates in this case. The petitioners, at the bottom of page 12 and on page 13 of the petition, quote this observation of Judge McAllister, although the petitioners well know that such is not the case and the record contains no such allegation.

Petitioners on pages 14 and 15 of the petition seek to weaken the significance of the interpretation of the phrase "subject to" by making certain references to a regulation adopted by the Administrator having no relevancy to the regulation in this case (Revised Procedural Regulation No. 1, Sec. 1300.24; 7 Fed. Reg. 8961), and reference to a decision of the Emergency Court of Appeals. *Illinois Packing Co.* v.

Snyder, 151 Fed. 2d 337. These were referred to and considered by Chief Judge Maris in his opinion (R. 75), and by Judge McAllister in his dissenting opinion (R. 82 and 83). Examination of these two variances from the customary practice of the Administrator and from the express provision of the Act, Sec. 203(a), do not, it is submitted, weaken the meaning of the Act.

It is submitted, that within the purview of the statute and appropriate reasonable regulations, and in the light of the conduct of the Administrator in giving the tenants an opportunity to present all the information possible to guide him in making his decision as to whether or not he would relieve the landlords from the onus of the regulation, no conceivable right of the tenant was invaded nor any vestige of due process denied said tenant, and consequently no question of great importance has been presented on this application for a writ of certiorari to the United States Emergency Court of Appeals.

The Administrator and the United States Emergency Court of Appeals were both correct in concluding that the tenants in this case had no standing whatsoever to file a protest within the meaning of Sec. 803(a) of the Emergency Price Control Act.

CONCLUSION.

Therefore, it is respectfully submitted that the petition herein for a writ of certiorari should be denied.

LOUIS L. TETELMAN,
Attorney for Landlords, Amici Curiae.

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 80.

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. CLARENCE KASKEL, MORTON H. BARON, ROBERT HERMANN, SAMUEL OGUS, CHARLES MASLOW, GEORGE WILLETT, HARRY WIENER, CHARLES GOLDMAN, DAVID RUDBERG, WILLIAM F. HOHAUSER and SIDNEY MAYBAUM,

Petitioners,

vs.

PAUL A. PORTER, Price Administrator,

Respondent.

LANDLORDS' BRIEF, *AMICI CURIAE.*

LOUIS L. TETELMAN,
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No. 80.

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Petitioners,

vs.

PAUL A. PORTER, Price Administrator,

Respondent.

LANDLORDS' BRIEF, *AMICI CURIAE.*

Statement.

Upon written consent of the parties, this brief, *amici curiae*, is filed on behalf of the landlords of the respective apartments in the building occupied or formerly occupied by petitioners as tenants.

Landlords herein are in the anomalous position of having a direct interest in the outcome of this proceeding without being parties thereto. Motion for leave to participate in oral argument was denied on October 28, 1946.

Facts.

Fifty-Five Corporation, organized under New York laws, is the owner in fee of premises No. 55 Central

Park West, New York City (R. 2), on which stands a nineteen story residential apartment house, some apartments of which are occupied by petitioners (R. 4). These are luxury apartments in one of the finest residential areas of the city. Only two tenants remain in possession. Applications by the other tenants for stays of execution of warrants of eviction, made to Associate Justices Black and Reed successively, were refused, the latter on July 3, 1946.

Prior to February 17, 1945, two individuals, Victor M. Earle and Alexander B. Carver, planned to sell their entire capital stock holdings in Fifty-Five Corporation cooperatively to persons desirous of acquiring some of the apartments for their own use through proprietary leases (R. 5). At that time the Rent Regulation for Housing in the New York City Defense Rental Area, 8 F. R. 13914, did not contain any provision with respect to the percentage of total dwelling units in the cooperative which had to be purchased or held in order to obtain a certificate relating to eviction under Section 6(b)(2) of such regulation. On February 17, 1945, and while the cooperative was in process of organization, but before the landlords herein purchased their allotted stock and proprietary leases, the Rent Regulation was amended by the addition of Subparagraph (3) to Section 6(b), 10 F. R. 1974, so as to permit the issuance of a certificate, among other things, only when "* * * stock in the cooperative has been purchased by persons who are then tenants of at least 80% of the dwelling units in the structure * * *", Section 6(b)(3)(ii). The latter amendment left open the right to a certificate under 6(b)(2) if "* * * the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to

issue a certificate." Section 6(b)(3)(ii), Appendix A of this brief. Accordingly, Messrs. Earle and Carver requested from the Administrator a finding of hardship, resulting in the issuance of an interpretive letter by the Administrator on March 23, 1945, exempting the cooperative from the restrictions of Section 6(b)-(3) (R. 6). In reliance on the Administrator's interpretive letter and without any knowledge whatsoever of anything that might have transpired between Messrs. Earle and Carver and the Administrator before its issuance and in complete good faith and for value, landlords herein purchased their respective apartments in the cooperative which went into effect on June 1, 1945 (cf. Revised Procedural Regulation 3, 9 F. R. 10481, Section 1300.243, Appendix B of this brief).

Preliminary to the institution of dispossess proceedings in the local Municipal Court to obtain possession of their apartments upon termination of the tenants' leases, landlords filed their petitions in the Area Rent Office pursuant to Section 6(b)(2) of the regulation for a certificate authorizing each of them "to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law" (R. 7). The Area Rent Director ordered a hearing, purportedly under Section 1300.211 of the Revised Procedural Regulations 3, 9 F. R. 10484, in aid of his investigation under Section 1300.206, at which tenants were present and represented by counsel and where a comprehensive record was made (Section 1300.211 and Section 1300.206, Appendix C of this brief). The Area Rent Director denied the applications (R. 8). Landlords thereupon filed a petition for review under the Revised Procedural Regula-

tions (Section 1300.209), with the Regional Director who affirmed the denial below (R. 8). Landlords thereupon filed their protest under the Revised Procedural Regulations (Section 1300.216), and Section 203(a) of the Emergency Price Control Act with the Administrator in Washington, D. C. By order made on September 28, 1945, the Administrator granted the protest, reversed the decisions below and issued the certificates relating to eviction (Reported, *In the Matter of Gordon et al.*, 3 Opinions & Decisions 3301, 9/28/45, Pike & Fisher. For opinion and orders in full, see Appendix D this brief). The Administrator rejected both the charges of fraud and misrepresentation levelled at the original stock owners relative to the antecedent interpretive letter and rejected the claim directed at the purchasers of the stock of their non-compliance with the regulations relative to their applications for the certificates relating to eviction.

Tenants then filed their protest with the very Administrator (R. 8) who had sustained landlords' protest. It was dismissed. Tenants then filed a complaint with the United States Emergency Court of Appeals (R. 1), which was also dismissed (R. 83). Both dismissals were based on a lack of tenants' standing to protest and consequent absence of jurisdiction (R. 8, 83).

Question.

Are the petitioners "subject to", any provision of the Administrator's order in this case (Appendix D, page 26), within the meaning of Section 203(a) of the Emergency Price Control Act?

Order in Question.

The Administrator's order (Appendix D) granted the protest of the respective landlords and stated further that they "be and they hereby are, authorized, * * *, to pursue their remedies at local law to evict the tenant occupying the apartment in the building at 55 Central Park West, New York City, the number of which appears below next to his name:".

It is to be noted that this order is neither compelling nor prohibitory, but permissive as to the landlord, lifting a limitation with its implementing sanctions from him and leaving the landlord and his tenant to whom the order is not directed, in status quo in the first instance under local law.

Argument.

POINT I.

Tenant is not "subject to" any regulation or order.

Under "Title II—Administration and Enforcement" of the Act, it is provided in

> "Sec. 203. Procedure
>
> (a) At any time after the issuance of any regulation or order under section 2, * * *, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provisions * * *"

and in

"Sec. 204. Review

(a) Any person who is aggrieved by the denial or partial denial of his protest may, * * *, file a complaint with the Emergency Court of Appeals, * * *, specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part."

Concisely, Congress said a person must be "subject to" an order to entitle him to protest to the Administrator and if he cannot protest, he does not have any right of review in the Emergency Court of Appeals.

Hence, in construing Section 203(a), the quest is for the intent of the Congress in adopting the phrase "subject to".

"The manifest purpose of Congress in enacting this statute was to preserve and protect the economic balance of the nation during a period of grave emergency, thereby achieving the prevention of inflation and its consequences enumerated in Section 1. *Yakus* v. *United States*, 321 U. S. 414, 423, 64 S. Ct. 660, 666, 88 L. Ed. 834. That aim was implemented by criminal sanctions to be imposed on those who deliberately choose to ignore the national welfare in this respect by selling commodities at prices above established levels."

M. Krauss & Bros. v. *United States*, 66 S. Ct. 705, 707.

"When it came to rents Congress pursued the policy it adopted respecting commodity prices.

> It established standards for administrative action and left with the Administrator the decision when the rent controls of the Act should be invoked."
>
> *Bowles* v. *Willingham* [321 U. S. 503, 512], sustaining the constitutionality of the act with respect to Rent Regulations.

The Act, read in its entirety, made "enforcement", criminal and civil, the keystone of the arch of the control structure (Section 205). The tenant, like the ultimate consumer, was free from all restrictions and sanctions. He could do no wrong under the Act.

A survey of the hearings before the House Committee on Banking and Currency, 77th Cong., 1st Session, which embraced four months of deliberations, day and night, (Chairman Steagall's statement to the House, 77th Cong., 1st Session, p. 9080) displays a deep concern for the community in general in stabilizing the economy and no interest in whether an ultimate consumer or tenant *per se* gained or lost some benefit. Those hearings show too, as does the Act—Sections 203, 204—an intention not to permit the Administrator to get out of hand in the imposition of controls on the manufacturer, processor, distributor, and landlord.

Obedience, was the watchword.

> "Sec. 203(a) is designed to provide the advantages of a hearing, in a manner consistent with the need for expeditious determinations, to all persons *who are required to obey* the provisions of regulations or orders under Sec. 2." (Italics supplied.) Sen. Rep. No. 931, 77th Cong., 2d Sess., p. 22.

The same report, after describing the procedure in the Act, continues,

> "Thus any person *subject to* any provisions of any regulation or order issued by the Administrator under Section 2 has a right to object to such provision and a right to have his objections considered." (Italics supplied.)

Chairman Steagall of the House Committee on Banking and Currency, in the course of a dispassionate explanatory statement to the House of the objects and purposes of H. R. 5990—the Act—in conjunction with the submission of the committee report No. 1409, November 7, 1941, stated relative to Section 204,

> "Any protestant *subject to the prohibition* of a regulation or order issued under Section 2 and who is aggrieved by the denial or partial denial of his protest, may file a complaint." (Italics supplied.) 77th Cong., 1st Sess., p. 9074.

Congressman Steagall doubtlessly had reference to Section 4, of the Act, which is headed "PROHIBITIONS". Thus, tested by legislative history, it can be concluded that Congress intended to place a protective shield, through protest proceedings, only around those required to comply with a possibly unreasonable or invalid regulation or order.

To carry out the purposes of the Act the Administrator had the authority to adopt procedural regulations.

> "Sec. 201(d) The Administrator may from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act."

On January 12, 1943, he issued Revised Procedural Regulation No. 3, 8 F. R. 526, which stated in Section 1300.215 (now Section 200.216 9 F. R. 10484):

> "A landlord is, for the purposes of this regulation, subject to a provision of a maximum rent regulation or an order, only if such provision prohibits or requires action by him."

His policy, so expressed, followed Section 1300.9 RPR No. 1, 7 F. R. 971, issued February 12, 1942 with respect to commodities.

> *Bowles* v. *Seminole Rock & Sand Co.*, 65 S. Ct. 1215, 1217.
>
> "Since this involves an interpretation of an administrative regulation a court must necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt. The intention of Congress or the principles of the Constitution in some situations may be relevant in the first instance in choosing between various constructions. But the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation."

The Emergency Court of Appeals approved of the Administrator's interpretation and policy since the Act's inception.

> *Buka Coal Company* v. *Brown*, 133 F. 2d 949;
> *Thomas Paper Stock Co.* v. *Bowles*, 148 F. 2d 831, 837;
> *Horns* v. *Bowles*, 151 F. 2d 191, 194;
> *Bayuk Cigars Inc.* v. *Porter*, 154 F. 2d 503, 513.

In *Horns* v. *Bowles*, 151 F. 2d 191, 194, it is stated:

> "'In *Thomas Paper Stock Co.* v. *Bowles*, 1944, 148 F. 2d 831, 837, we said that the primary purpose of the protest procedure provided in Sec. 203 of the Act, 50 U. S. C. A. Appendix, Sec. 923,' is to afford to a person subject to a provision of a regulation or order which he believes to be invalid the opportunity to present his objections thereto to the Administrator and to request its modification or recission *in order that he may not have to obey it in the future.*" (Italics ours.)

The Appellate Division of the Supreme Court in New York so interpreted the Act.

> *Werth* v. *Gordon*, 270 App. Div. 255, (motion for leave to appeal to the Court of Appeals denied, 270 App. Div. 753).
>
> "* * * We might add that it is even doubtful that the plaintiffs have any standing before the Emergency Court of Appeals. Under the OPA legislation the only person who may appeal to the Emergency Court of Appeals is one who is aggrieved by the denial of his protest by the Administrator, and the only person who may file a protest with the Administrator is one who is 'subject to any provisions' of a regulation or order of the OPA (Sec. 203(a), Emergency Price Control Act, Tit. 50 U. S. C. A. Appendix Sec. 923(a)). As the Landlord, rather than the tenant, is subject to the provisions of the OPA, the plaintiffs would appear not to have any standing to protest the Administrator's order or appeal to the Emergency Court of Appeals."

The Administrator's interpretation as to commodities seemingly has been approved by this Court.

Collins et al. v. *Porter,* 66 S. Ct. 893, 894.

> "His contention that the petitioner is not a 'person subject to * * * (the) regulation,' Sec. 203(a), is amply refuted by the continuing liability of the petitioners, *United States* v. *Hark,* 320 U. S. 531, 64 S. Ct. 359, 88 L. Ed. 290, for some $6,800,000, should their arguments as to the invalidity and inapplicability of the regulation be rejected when the case is considered on the merits."

In addition to the practical acceptance of the Administrative interpretation and conduct with regard to protest procedure, Congress has never extended or enlarged the field of protestants. (Hearings: S.C. on B & C, 78th Cong., 2d Sess. on S1764, pp. 474, 1304, 1325, 1330, 1367, 14[redacted]; H. C. on B & C, 78th Cong., 2d Sess. on H. R. 4376, pp. 449, 495, 568; S.C. on B & C., 79th Cong., 1st Sess. on S.J. Res. 30, p. 452.)

> "Failure of Congress to alter the Act after it had been judicially construed, and the enactment by Congress of legislation which impliedly recognizes the judicial construction as effective, is persuasive of legislative recognition that the judicial construction is the correct one."

Apex Hosiery Co. v. *Leader,* 310 U. S. 469, 488.

The amendment to Section 203(a) of the Price Control Act of 1942 made by Section 106 of the Stabilization Act of 1944, 58 Stat. 632, 638, enlarged the time to protest from "within sixty days" to "at any time" (see *Utah Junk Co.* v. *Porter,* 66 S. Ct. 888) for those

who were "subject to" the regulation or order, but did not repudiate the Administrator's and the Courts' accepted definition of who was properly a protestant.

Section 204(b) and (d) of the Act proscribe judicial interference with Administrative orders. Had Congress in mind protest of a decontrol order,—for that in effect is the order or certificate here—invocation of the protest procedure by a tenant would have been in vain for in the meanwhile he would have been evicted through proceedings under local law. Certainly such purposeless result should not be ascribed to Congress.

> "Significantly the recent Emergency Price Control Act of 1942, 56 Stat. 23, explicitly denies the power of the reviewing courts to enjoin enforcement of the administrative orders."
>
> *Scripps Howard Radio* v. *F. C. C.*, 316 U. S. 4, 17.

In *Utah Junk Co.* v. *Porter, supra,* it was held that Congress intended that a protestant have the right to file a protest "at any time". Is it reasonable to suppose that Congress intended that the ultimate consumer and the tenant be "subject to" the relaxing regulations and orders, thereby opening the floodgates to their protests from the Act's inception?

POINT II.

The potential administrative burden prompted Congress to confine protest rights to those "subject to" sanctions.

Congress intended not to permit every ultimate consumer and every tenant in a defense rental area to protest any regulation or order because the adminis-

trative burden would have been so enormous as to clog the machinery and defeat the purpose of the Act.

In discussing the limitation on a proposed amendment to Section 204 of the Act in connection with Stays in Criminal Proceedings, etc., Stabilization Extension Act of 1944; Chapter 325, Public Law 383, Section 107(b), the Senate Committee on Banking and Currency, Sen. Rep. No. 922, May 30, 1944, stated:

> "The wisdom of thus limiting the amendment becomes apparent when the enormous task of enforcing price and rent control is appreciated. We are informed, for example, that the number of enforcement proceedings instituted each month for price or rent violations has recently been averaging over 700. If in every one of these cases the validity of the regulations could be challenged, even though only to delay trial by contesting the regulation in the Emergency Court of Appeals, enforcement would break down completely, while the absorption of the operating staff in the resulting flood of litigation in that court would seriously interfere with effective administration."

With greater force should the observation apply to a tenant who is not subject to sanctions and is in no worse position under local law than he was before the creation of the defense-rental area.

The Administrator's periodical reports to Congress, required by Section 301 of the Act (not less frequently than every ninety days), are eloquent testimony to the monumental task he has performed. Statistics relative to administration of rent control are set forth in Appendix E.

It is submitted that Congress would have been most

unwise and impractical to have intended to include persons untouched by sanctions in the clause "subject to".

POINT III.

Tenant did not acquire any vested right.

The argument has been advanced that the tenant received some right to remain in possession of his housing accommodations until denied after notice, hearing and judicial review. Recourse is had to Section 2(d) of the Act. It reads:

> "Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which, in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act."

It solely indicates a Congressional desire to prevent "price or rent increases * * * inconsistent with the purposes of this Act".

What Congress had in mind, is revealed by Sen. Rep. No. 931, 77th Cong., 2d Sess. (1942), p. 17 on market and renting practices.

> "In order to achieve effective price control it

may often be necessary to regulate or prohibit practices which are equivalent to *concealed price or rent increases* or which are likely to result in price and rent increases inconsistent with the purposes of the bill." (Italics supplied.)

Recourse is also had to Section 4(b) of the Act which reads:

"It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, or proposes to take, actiof authorized or required by this Act or any regulation, order, or requirement thereunder."

But that section was included by Congress:

"In furtherance of effective administration and to prevent the *intimidation* of tenants * * *

"Section 4(b) protects tenants in the assertion of the rights conferred on them by the bill * * *" (Italics supplied)

Statement of Chairman Steagall of the House Committee on Banking and Currency, 77th Cong., 1st Sess., p. 9072, Vol. 87, Part 8.

A fortiori, Section 4(d) of the Act displays a contrary intent.

"Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent."

In the light of this latter express declaration and the absence of any appropriate provision in the Act, it is submitted the Administrator had no power to

grant a vested right to continued possession of housing accommodations. Nor should such right be implied.

Vis-a-vis the landlord, the reasonableness of Rent Regulations for Housing and the Procedural Regulations have been passed upon and approved.

Bowles v. *Willingham*, 321 U. S. 503.

That case determined that the Act did not clash with the Fifth Amendment because Congress failed to provide for a hearing to landlords in advance of the administrative creation of a defense rental area. If the Administrator were to eliminate the area without notice, the landlord could not complain. Certainly, the tenant, who is not subject to the civil and criminal penalties of the Act, should not be heard to complain.

Mr. Justice Rutledge in his concurring opinion in *Bowles* v. *Willingham*, stated at page 522:

> "* * * The power to specify defense rental areas, rather than amounting to an excess of permissible delegation, is actually a limitation upon the administrator's authority, restricting it to regions where the facts, not merely his judgment, make control of rents necessary both to keep down inflation and to carry on the war activities concentrated in them."

Since the Administrator has the power to further attenuate his sway over defense rental areas through exceptions in the regulations, as ruled in

Taylor v. *Brown*, 137 F. 2d 654, certiorari denied 320 U. S. 787,

it would follow that the time when and the circumstances where he so acts should be solely his concern.

Ordinarily, in an emergency of acute shortage of housing accommodations, the State would fundamentally regulate occupancy and incidentally fix reasonable rentals.

Edgar A. Levy Co. v. *Siegel*, 258 U. S. 242.

See also:

Block v. *Hirsh*, 256 U. S. 135.

Here, in this temporary emergency, the Federal Government fundamentally regulates prices and rents to prevent inflation and as an incident thereto, through an administrative regulation, imposes a ban on a landlord to obviate eviction pressures which might lead to underhand and black market transactions tending to frustrate the stabilization objective.

On November 9, 1946 the President of the United States directed the

> "immediate abandonment of all control over wages and salaries and all controls over prices except that necessary to implement the rationing and allocation program of sugar and rice. Rent control, however, must and will be continued."

He further stated:

> "The reasons which impel the lifting of price controls are not applicable to rents. Housing is desperately short and will continue to be short for a long time to come. Tenants are in no position to resist extortionate demands.
>
> "The fixing of rents by the ordinary processes of bargaining would bring hardship and suffering to our people. It may be that some adjustments

of rents will be required, but control of rents and control over evictions must be continued."

The question is posed, whether in the absence of an intent to control the economy in checking inflation and the presence only of a housing shortage—a matter of local concern—the system of Federal rent control can constitutionally stand. New York State, among others, has foreseen the eventualities and created its own system to prevent hardship. (Chapter 274, Laws of New York 1946, effective March 30, 1946.)

In

Bowles v. *Willingham*, 321 U. S. 503, 521,

it is stated:

"With reference to the substantive aspects of the legislation, I would add here only the following: Since the phases in issue in this case relate to real estate rentals, it is not amiss to note that these ordinarily are within the state's power to regulate rather than that of the federal government. But their relation, both to the general system of controlling wartime price inflation and to the special problems of housing created in particular areas by war activities, gives adequate ground for exercise of federal power over them.

"Likewise, with respect to the delegation of authority to the administrator to designate 'defense rental areas' and to fix maximum rentals within them, the same considerations, and others, sustain the delegation as do that to fix prices of commodities generally."

It is submitted that no vested right has been acquired by tenant.

POINT IV.

Tenants never became parties to any proceedings in a juridical aspect.

Revised Procedural Regulation No. 3 was designed to facilitate the procurement of evidence from every reliable source upon consideration of a landlord's petition (Secs. 1300.206, 1300.211). The tenant was at most an aid to the Administrator. Indeed, on tenants' applications, administrative action is "within the discretion of the Rent Director" and the procedure is the same as in proceedings initiated by the Rent Director (Secs. 1300.205, 1300.207 and Rent Regulation, Sec. 5(a)).

The Administrator is not acting as a judge in a contest between parties. He is really the tenants' advocate and *alter ego* in effecting the purposes of the Act.

In

Porter v. *Warner Holding Co.*, 66 S. Ct. 1086,

the Administrator was sustained in his attempt to seek, for the benefit of tenants, restitution of illegally exacted rents—something the tenants could not do.

In

Porter v. *Dicken*, 66 S. Ct. 1094,

the Administrator was sustained in his effort to obtain an injunction in the Federal District Court to restrain an unlawful eviction of a tenant in a state court proceeding.

See also:

Porter v. *Lee*, 66 S. Ct. 1096.

It is submitted that by inviting the tenant to participate in the initial search for evidence before the Area-Rent Director the Administrator did not make the tenant subject to the Act and a party-protestant.

In the absence of a public right requiring protection or a justiciable private right, one could not become a party in the regular courts.

Amalgamated Utility Workers v. *Consolidated Edison Co.*, 309 U. S. 261.

POINT V.

Tenants have not been denied due process.

This is not a case for resort to the protection of the Fifth Amendment. It has been demonstrated that Congress never intended to vest or empower the Administrator to vest in tenant any right to maintain possession of the housing accommodation.

In construing the Federal Communications Act—permanent legislation—this Court stated:

> "The policy of the Act is clear that no person is to have anything in the nature of a property right as a result of the granting of a license."
>
> *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470, 475.

Here, less than a grant of a license is involved.

Due process of law is not denied when an opportunity is not given to be heard on a question to be

settled, not by a judicial proceeding, but by the action of the agents of the Government.

Butterfield v. *Stranahan*, 192 U. S. 470, 497.

> "It is urged that there was a denial of due process of law in failing to accord plaintiff in error a hearing before the Board of Tea Inspectors and the Secretary of the Treasury in establishing the standards in question, and before the general appraisers upon the reexamination of the tea. Waiving the point that plaintiff in error does not appear to have asked for a hearing, and assuming that the statute did not confer such a right, we are of the opinion that the statute was not objectionable for that reason. The provision in respect to the fixing of standards and the examination of samples by government experts, was for the purpose of determining whether the condition existed which conferred the right to import, and they therefore in no just sense concerned a taking of property. This latter question was intended by Congress to be finally settled, not by a judicial proceeding, but by the action of the agents of the Government, upon whom power on the subject was conferred."

Nor is due process denied when Congress expressly grants review to the category of persons subject to the Administrator's order and obviously elects to otherwise withhold it.

Estep v. *U. S.*, 66 S. Ct. 423, 426.

> "Apart from constitutional requirements, the question whether judicial review will be provided where Congress is silent depends on the whole setting of the particular statute and the scheme of regulation which is adopted. *Switch-*

men's Union v. National Mediation Board, 320 U. S. 297, 301, 64 S. Ct. 95, 97, 88 L. Ed. 61. And except when the Constitution requires it, judicial review of administrative action may be granted or withheld as Congress chooses."

CONCLUSION.

The judgment of the United States Emergency Court of Appeals should be affirmed.

Respectfully submitted,

LOUIS L. TETELMAN,
Attorney for Landlords, Amici Curiae.

On the brief:
LOUIS L. TETELMAN,
GERTRUDE TETELMAN,
SYLVIA U. SIEGEL,
HARRY CARROLL,
all of New York City.

APPENDIX A.

(3) Occupancy by purchaser of stock in a cooperative.—

(I)

* * * * *

(II) Where the cooperative was organized as such or acquired its title or leasehold interest in the structure or premises on or after February 17, 1945, or the effective date of Regulation, whichever is the later, or where the purchased stock originally was issued on or after that date, no certificate shall be issued, unless on such date the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to issue a certificate, or unless, at the time of issuance of the certificate, stock in the cooperative has been purchased by persons who are then tenants of at least 80 percent of the dwelling units in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises.

(III)

* * * *

(IV) In all other cases, including those excepted from paragraph (B)(3)(II) and (III), the issuance of a certificate shall be pursuant to paragraph (b)(2).

APPENDIX B.

§ 1300.243 *Interpretations.* An interpretation given by an officer or employee of the Office of Price Administration with respect to any provision of the Act or any maximum rent regulation or order thereunder, will be regarded by the Office of Price Administration as official only if such interpretation was requested and issued in accordance with §§ 1300.244 to 1300.246, inclusive, of this regulation. Action taken in reliance upon and in conformity with an official interpretation and prior to any revocation or modification thereof or to any superseding thereof by regulation, order or amendment, shall constitute action in good faith pursuant to the provision of the Act, or of the regulation or order to which such official interpretation relates. An official interpretation shall be applicable only with respect to the particular person to whom, and to the particular factual situation with respect to which, it is given unless issued as an interpretation of general applicability.

[§ 1300.243, formerly § 1300.241, amended by Am. 9, effective 9-1-44]

APPENDIX C.

§ 1300.211 *Oral hearings*—(a) *Requests for oral hearing.* Any petitioner or applicant may request an oral hearing. Such request shall be accompanied by a showing as to why the filing of affidavits or other written evidence and briefs will not permit the fair and expeditious disposition of the petition or application. In the event that an oral hearing is ordered, notice thereof shall be served on the petitioner or applicant not less than five days prior to such hearing. The time and place of hearing shall be stated in the notice. A presiding officer will be appointed with all necessary powers to conduct the hearing. Any such oral hearing may be limited in such manner and to such extent as deemed appropriate to the expeditious determination of the proceeding.

§ 1300.206 *Investigation of petitions and applications.* Upon the filing of a petition or application pursuant to the provisions of this regulation, the rent director may make such investigation of the facts involved in the petition or application, hold such conferences, and require the filing of such reports, evidence in affidavit form or other material relevant to the proceeding, as he may deem necessary or appropriate for the proper disposition of the petition or application.

APPENDIX D.

UNITED STATES OF AMERICA

BEFORE THE OFFICE OF PRICE ADMINISTRATION

Docket No. RPA-II-425-P

In the Matter of

DAVID GORDON, et al.,
Protestant.

ORDER GRANTING PROTEST

On September 7, 1945, David Gordon of 41 West Seventy-Second Street, New York City, and twenty-four other purchasers of stock in the 55 Corporation, a New York Corporation, filed a protest against an order issued on September 7, by the Acting Regional Administrator of the Office of Price Administration for Region II which denied an application for review of an order entered by the rent director for the New York City Defense-Rental Area, denying the protestants' petitions for certificates of eviction permitting them to pursue their remedies at local law for the eviction of tenants of certain apartments located in the building at 55 Central Park West, New York City. Protestants first requested, but subsequently waived, consideration of their protest by a Board of Review.

Due consideration has been given to the protest and the record of the proceeding had herein. An opinion in support of this order has been issued simultaneously herewith.

For the reasons stated in the accompanying opinion, in accordance with the Emergency Price Control Act

of 1942, as amended, the Rent Regulation for Housing in the New York City Defense-Rental Area, and Revised Procedural Regulation No. 3, it is hereby ordered that:

1. That protest Docket No. RPA-II-425-P, be and it hereby is, dismissed as to Victor M. Earle, Alexander B. Carver and Fifty-Five Corporation.

2. That the protest of David Gordon and the other individual protestants be, and it hereby is, granted.

3. That each of the individuals listed below, be and they hereby are, authorized, on and after December 14, 1945, to pursue their remedies at local law to evict the tenant occupying the apartment in the building at 55 Central Park West, New York City, the number of which appears below next to his name:

Name	Apartment
David Gordon	10-A
Jacques Braunstein	14-A
Mrs. Sophie Tager	16-A
Ellis Amour	18-A
William J. McEnery	18-B
Mrs. Eleanor-Lee Hartwell	8-C
Solomon Kipnis & Mrs. Sylvia Fox	11-C
William F. & Mrs. Katherine Gorman	13-C
Alexander Adler	14-C
William Floyd Davis	15-C
Adolph G. & Mrs. Alice S. Ruthman	14-D
Joseph L. Friedman	16-D
Charles Everett	17-D
Mrs. Elizabeth Schaeffer	18-D

Howard E. Kershner	19-D
Abraham D. & Mrs. Lillian Bressman	14-E
Samuel Kipnis	15-E
Mrs. Rhoda Cartier	13-F
Henry & Mrs. Margaret H. Zaun	15-F
Mrs. Ada M. Becker	18-F
Harry Goldstein	19-F
Julius M. Levine	9-G
Jack Rosen	10-G
Herman Goodman	12-F

4. That each of the individuals named in paragraph 3, above, be and he hereby is, authorized to request that this order be amended, insofar as it is applicable to him, to specify a date earlier than December 14, 1945, upon which he may pursue his remedy at local law for the eviction of the tenant occupying the apartment listed next to his name in paragraph 3, above, by filing an original and 5 copies of such request, together with his affidavit showing the special hardship that would result to him if an earlier date is not substituted, with the Secretary, Office of Price Administration, Washington 25, D. C., within 30 days from the date of this order. Issued and effective this 28 day of September, 1945.

CHESTER BOWLES,
Administrator

UNITED STATES OF AMERICA

BEFORE THE OFFICE OF PRICE ADMINISTRATION

Docket No. RPA-II-425-P

In the Matter of

DAVID GORDON, et al.,

Protestant.

OPINION ACCOMPANYING ORDER GRANTING PROTEST

On September 7, 1945, David Gordon of 41 West Seventy-Second Street, New York City, and twenty-four other purchasers of stock in the 55 Corporation, a New York Corporation, filed a protest against an order issued on September 7, by the Acting Regional Administrator of the Office of Price Administration for Region II which denied an application for review of an order entered by the rent director for the New York City Defense-Rental Area, denying the protestants' petitions for certificates of eviction permitting them to pursue their remedies at local law for the eviction of tenants of certain apartments located in the building at 55 Central Park West, New York City.[1]

The applications for review, directed to the Regional Office of the Office of Price Administration, were filed by the twenty-four purchasers of stock in the above corporation and were consolidated by the Regional Administrator in his order denying the applications for review since identical questions of law and fact are involved in each case and all the apart-

[1] Victor M. Earle, Alexander B. Carver and Fifty-Five Corporation joined in the protest. The protest must be dismissed as to them since they are not subject to the orders protested.

ments for which certificates were sought are located within one multiple-unit building.

The protestants are the purchasers of shares of the capital stock of the 55 Corporation under a share-ownership plan entered into between the former owners of all the capital stock of the corporation and the respective purchasers under which the purchasers have become entitled, by reason of their acquisition of such stock, to proprietary leases covering certain apartments in the premises owned by the corporation. The plan establishes what is commonly known as a cooperative corporation and the respective protestants are seeking possession of apartments to which they are entitled under proprietary leases, pursuant to Section 6(b)(2) of the Rent Regulations, as cooperative owners.

It appears from the record that prior to June 1, 1945, on which date, pursuant to the terms of the agreement between the former owners of the capital stock and the cooperative purchasers, the plan was declared effective, all of the capital stock of 55 Corporation was owned by Victor C. Earle and Alexander D. Carver. It is alleged that some time prior to October 30, 1944, Earle and Carver who were, at that time, the owners of all the capital stock in the corporation conceived the idea of forming a cooperative and the sale of the outstanding capital stock to cooperative owners. Under Date of October 30, a request for interpretation on behalf of the corporation was addressed to the New York City Area Office of the Office of Price Administration, requesting advice as to whether, if the corporation was reorganized as a cooperative and all of the stock in the corporation purchased by cooperative owners entitled to proprietary leases, certificates would issue permitting such owners to gain possession of apartments purchased by them under Section 6(b)(2) of the Rent Regulation for Housing in the New York City Defense-Rental

Area. On November 17, a letter was sent to all of the tenants in the building owned by the corporation outlining the cooperative plan in general terms. On December 14, a printed copy of the plan and a subscription agreement were forwarded to all of the tenants. Under the plan it was contemplated that sufficient capital stock of the corporation would be sold to purchasers of apartments by the then owners to produce a maximum of $390,000. Out of the 115 units in the building, not more than 35 were to be sold, the sales prices to be determined on the basis of the number of rooms in the apartments. Actually, on June 1, when the plan was declared operative, stock allocable to 28 apartments had been sold for a total sales price of $389,300. The purchaser of stock allocable to a particular apartment became entitled, when the plan was declared effective, to a proprietary lease for a four-year term, renewable for ten successive four-year periods on the apartment covered by the particular stock purchased by him. The proponents of the scheme contracted that when the plan was declared effective the outstanding obligations of the corporation would not exceed $1,550,000 evidenced by a first mortgage held by the Metropolitan Life Insurance Company providing for specified rates of interest and amortization payments.

It further appears from the evidence that between November 17 and the early part of February 1945, efforts were made by Earle and Carver to sell the apartments in the building to cooperative owners. While the greater emphasis was placed on the sale of apartments to existing tenants, a number of prospective outside purchasers were likewise solicited, although no public advertisement of the apartments in question took place. During this period Victor Earle continued to press for the interpretation requested on October 30, 1944. Shortly prior to February 17, 1945 Earle was finally advised that certificates of evic-

tion would issue in favor of the purchasers of units in the building providing that there was full compliance with the provisions of Section 6(b)(2) of the Regulation, including compliance with the twenty per cent payment required of said section.

On February 17, 1945 the Rent Regulation for Housing in the New York City Defense-Rental Area was amended by the addition of a new section, 6(b)(3), which provides that no certificates authorizing the eviction of an existing tenant in a cooperative will issue if the cooperative was organized as such or acquired its title or leasehold interest in the structure or premises on or after that date, unless on such date the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to issue a certificate, or unless certain other conditions not pertinent to the case at hand were met. Earle, upon the issuance of this amendment, applied to the New York City area rent office for a determination as to whether the cooperative proposed by the printed plan of December 1, 1944 was, within the meaning of the Regulation, in the process of organization on February 17, 1945, and requested that if such finding was in the affirmative, that it be held exempt from the provisions of Section 6(b)(3) on the ground that substantial hardship would result from a failure to issue certificates. His request was supported by certain affidavits relating to steps taken by Earle and his associates and employees to implement the proposed cooperative plan and naming certain existing tenants and outside parties who had been contacted and were alleged to have evinced a definite interest in purchasing apartments. Certain letters from persons contacted by Victor Earle or his agents were likewise submitted to support the allegations of the above affidavits. After consideration of the affidavits and supporting letters in question, the New York City

Area Office advised Earle by letter dated March 23 that, based on the facts presented, the corporation would be held exempt from the provisions of Section 6(b)(3), under the so-called "hardship" clause of that section, and that certificates would issue to purchasers of apartments of the premises, providing the provisions of Section 6(b)(2) were fully met.

Subsequently, Earle and Carver sold to various purchasers a sufficient number of apartments in the premises to declare the plan effective. On May 29, 1945, 28 apartments in the premises had been sold for the sum of $389,300 and the purchasers became entitled to the issuance to them of 38.93 shares of the capital stock, the remaining stock of the corporation then outstanding to be returned under the plan to the corporate treasury. The $389,300 was on that date on deposit in a certain account in the Chase National Bank, denominated, "Victor M. Earle and Alexander B. Carver, trust account." On May 29, Earle and Carver withdrew from these accounts sufficient money to pay the existing indebtedness of the corporation down to $1,540,583.42, turned over the balance of stock held by them above the 38.93 shares to be issued to purchasers of apartments of the premises to the corporate treasury and on June 1, 1945 declared the plan in effect. Between June 14 and June 18, 25 of the stockholders in the corporation, who became entitled to possession of apartments under the plan, petitioned for certificates of eviction to the New York City Defense-Rental Area Office. The remaining purchasers of the apartments in the building did not so apply and are not parties to these proceedings.

The issues presented for the Administrator's determination in this proceeding are:

(1) Whether the protestants fall within the pur-

view of the exemption provision of Section 6(b)(3) of the Regulation; and,

(2) Whether they have met the down payment provisions of Section 6(b)(2) of the Regulation. If the answer to both of these questions is in the affirmative, the protestants are entitled to the certificates relating to eviction.

Whether or not the Area Rent Office should have advised the 55 Corporation that it fell within the exemption provision of Section 6(b)(3) of the Regulation on March 23, 1945, and even though the Administrator is empowered to reverse such determination at this time, it is the opinion of the Administrator, in the light of the entire record and particularly the action of the protestants in purchasing shares in the cooperative organization in reliance on the advice of the Area Office that the protestants should be held to come within the "hardship" exemption clause. In reaching this conclusion the Administrator has examined with care the evidence adduced for the purpose of showing that the letter of March 23 was obtained through fraud and misrepresentation. Without commenting on the evidence in detail, it is sufficient to say that, although there is some variation between the representations of Earle and the facts, it does not disclose that the letter of March 23 was secured through fraud and misrepresentation.

With respect to the question of whether the protestants have met the down payment provisions of Section 6(b)(2) of the Regulation, the record discloses that when they applied for the certificates relating to eviction, the determinative date, they had made cash payments of $389,300 on a purchase price of $1,929,883.42 or slightly in excess of twenty per cent and that the amount paid by the purchasers in each case amounted to twenty per cent of the purchase price of their individual apartments taking into

consideration the portion of the total underlying mortgage allocable to each apartment. The protestants have, therefore, established their right to certificates relating to eviction.

Section 6(b)(2) of the Regulation now provides that a certificate shall authorize pursuit of local remedies for eviction at the expiration of six months after the date of the filing of the petition. However, it also provides that a certificate may authorize the pursuit of local remedies for eviction at a time less than six months after the filing of the petition if the Administrator finds that "special hardship" would result if the petitioner were required to wait until six months after the filing of the petition to pursue local remedies. Protestants will be authorized to pursue their local remedies on December 14, 1945, approximately six months after the filing of the petitions.[2] However, each of the protestants will be afforded an opportunity to request that he be permitted to pursue his local remedies at an earlier date upon a showing of the hardship to which he would be subjected if he was requested to wait until after December 14, 1945, to secure possession of the apartment to which he is entitled.

For the foregoing reasons, the protest should be granted.

Issued and effective this 28 day of September 1945.

CHESTER BOWLES,
Administrator.

[2] The petitions were filed between June 14 and 18, 1945.

UNITED STATES OF AMERICA

Before the Office of Price Administration

Docket No. RPA-II-425-P

In the Matter of

David Gordon, et al.,

Protestant.

Order Modifying Order Granting Protest

On September 7, 1945, a protest was filed in the above matter. On September 28, 1945, an order granting the protest was issued with an accompanying opinion. The order permitted the individual protestants to file request for the amendment of the order granting the protest. On the same day, seven affidavits were filed by or on behalf of individual protestants seeking amendments to the order granting the protest.

In the opinion accompanying the order granting the protest the Administrator stated:

> "Section 6(b)(2) of the Regulation now provides that a certificate shall authorize pursuit of local remedies for eviction at the expiration of six months after the date of the filing of the petition. However, it also provides that a certificate may authorize the pursuit of local remedies for eviction at a time less than six months after the filing of the petition if the Administrator finds that 'special hardship' would result if the petitioner were required to wait until six months after the filing of the petition to pursue local remedies. Protestants will be authorized to pursue their local remedies on December 14, 1945, approximately

six months after the filing of the petitions.[1] However, each of the protestants will be afforded an opportunity to request that he be permitted to pursue his local remedies at an earlier date upon a showing of the hardship to which he would be subjected if he was required to wait until after December 14, 1945, to secure possession of the apartment to which he is entitled."

On the basis of the affidavits filed on September 28, 1945, and the entire record of the proceedings, it is the opinion of the Administrator that, David Gordon, Julius M. Leving, Charles Everett, have established that their failure to be authorized to pursue their remedies at Local law, to secure the eviction of the tenants occupying the apartments which they have purchased, by October 1, 1945, rather than December 14, 1945, will result in special hardship to them.

The Administrator has concluded that the other protestants on whose behalf affidavits were filed on September 28, 1945, have not established their right to similar relief since they have not personally requested such relief, or established the facts alleged. In reaching this conclusion the Administrator has not passed upon the substance of their claims to such relief. They may, therefore, file further requests in conformity with the order granting the protest.

Therefore, in accordance with the Emergency Price Control Act of 1942, as amended, the Rent Regulation for Housing and the New York City Defense-Rental Area, Revised Procedural Regulation No. 3, and the order granting protest, issued September 28, 1945, it is hereby ordered:

1. That the order granting the protest in the above entitled proceeding, dated September 28, 1945,

[1] (Fn. in original) The petitions were filed between June 14 and 18, 1945.

be, and it hereby is, modified by striking from paragraph 3 of such order, the names David Gordon, Julius M. Levine and Charles Everett.

2. That each of the individuals listed below be, and he hereby is, authorized, on and after October 1, 1945, to pursue his remedy at local law to evict the tenant occupying the apartment in the building of 75 Central Park West, New York City, the number of which appears below next to his name.

Name	Apartment
David Gordon	10-A
Julius M. Levine	9-G
Charles Everett	17-D

Issued and effective this 28 day of September 1945.

CHESTER BOWLES,
Administrator

APPENDIX E.

For example, as of March 31, 1944, 746,000 separate landlords' petitions were acted upon and 363,000 rent increases permitted (Chester Bowles Administrator before House Committee on Banking and Currency, 78th Cong., 2d Sess., May 1944, Vol. II, p. 216).

Since the beginning of rent control in June 1942 to April 1, 1945, 1,216,495 landlords' petitions were received and 496,819 rent adjustments granted. As to tenants, 2,612,062 complaints were received and 784,147 adjustments were effected (Ivan D. Carson, Deputy Administrator, before House Committee on Banking and Currency, 79th Cong., 1st Sess., June 1945, Part I, p. 84).

Up through the Spring of 1946, 750,000 rent increases were granted landlords (Paul A. Porter, Administrator, House Committee on Banking and Currency, 79th Cong., 2d Sess., March 1946, Vol. II, p. 1673).

Up to about November 1946, 1,600,000 landlords' petitions were received and 800,000 rent adjustments granted (Ivan D. Carson, testimony before American Legion's Housing Committee reported in N. Y. Times, Nov. 6, 1946, p. 25).

SUPREME COURT OF THE UNITED STATES

No. 80.—October Term, 1946.

Jack Parker, Isidor M. Saks, Melvin Caplan, et al., Petitioners. *v.* Philip B. Fleming, Temporary Controls Administrator.	On Writ of Certiorari to the Emergency Court of Appeals.

[January 20, 1947.]

Mr. Justice Black delivered the opinion of the Court.

Petitioners are tenants of a New York apartment house. Their landlords applied for a certificate from the New York Area Rent Director authorizing eviction proceedings in the State courts.[1] Section 6 of the Rent Regulations for New York City, issued by the Price Administrator under authority of § 2 of the Emergency Price Control Act, 56 Stat. 23, 58 Stat. 632, 50 U. S. C. App. Supp. V, § 902, prohibits landlords from instituting such proceedings except under certain specific conditions not here relevant,[2] or when a special certificate authorizing eviction is issued by the Area Rent Director upon his find-

[1] The landlords here claimed to be purchasers of stock in a co-operative apartment corporation which stock holding entitled each of them to possession of an apartment under a proprietary lease.

[2] Section 6 (a) of the Rent Regulations for New York City Defense Area, 8 Fed. Reg. 13914, as amended, provides that "no tenant shall be removed from any housing accommodation, by action to evict . . . unless:" (1) The tenant has refused to renew his lease; (2) The tenant has unreasonably refused the landlord access to the premises; (3) The tenant has violated an obligation of tenancy or is committing a nuisance; (4) Subtenants occupy the premises at the time of the expiration of the prime tenant's lease; (5) The landlord "has an immediate compelling necessity to recover possession . . . for use and occupancy as a dwelling for himself."

ing, for example, that failure to authorize eviction would impose "substantial hardship" upon the landlords.[3]

In this case the Area Rent Director refused to issue the requested certificate after extensive hearings at which both the landlords and the tenants presented evidence. Denial was based on a finding that the landlords had wholly failed to meet the regulation's conditions; that their request was part of a concerted plan to evade the Price Control Act; and that a fraud had been perpetrated against the OPA. The Regional Rent Director affirmed this ruling. On protest by the landlords, the Price Administrator reversed the ruling of the Area Director and ordered that the certificate be issued. Petitioners thereupon filed a protest of their own with the Administrator. When the Administrator dismissed this protest, they sought relief in the Emergency Court of Appeals, complaining that the Administrator's order was "not in accordance with law" and was "arbitrary and capricious." On motion of the Administrator, that action was dismissed on the ground that petitioners were not "subject to" the Administrator's order and therefore had no right to protest or have judicial review of the dismissal of their protest. *Parker* v. *Porter*, 154 F. 2d 830.[4] We granted

[3] Section 6 (b) (3) "applies to the issuance of a certificate for occupancy of housing accommodations in a structure or premises owned by a co-operative corporation . . . by a purchaser of stock . . . in such co-operative who is entitled by reason of ownership of such stock to possession of such housing accommodations by virtue of a proprietary lease or otherwise." The part of § 6 (b) (3) ii pertinent here provides that where the co-operative was organized after February 17, 1945, or the effective date of the regulation, "no certificate shall be issued, unless on such date the co-operative was in process of organization and the Administrator finds that substantial hardship would result from the failure to issue a certificate. . . ."

[4] The original respondent here was Paul A. Porter, Price Administrator. The functions of his office have been assumed by Phillip B. Fleming, Temporary Controls Administrator, who has been substituted as respondent.

certiorari because of the importance of the issue raised. —U. S. —.

Section 204 (a) of the Emergency Price Control Act provides that "Any person who is aggrieved by the denial . . . of his protest" against an order of the Price Administrator issued under § 2 of the Act may, upon complaint to the Emergency Court of Appeals, secure a judicial review of the Administrator's denial of such "protest." Under § 204 (b) that Court can enjoin or set aside the protested "order" in whole or in part only if it is satisfied that the order "is not in accordance with law, or is arbitrary or capricious." But § 203 (a) denies the right to make a "protest" upon which review may be had to all but persons who are "subject to any provision of such . . . order." The Emergency Court of Appeals did not question that the petitioners were "aggrieved" within the meaning of § 204 (b) by the Administrator's special order authorizing their landlord to institute legal proceedings to evict them from their apartments. *See Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470, 476, 477. Review was denied solely on the ground that they were not "subject to" that order within the meaning of § 203 (a).

In deciding a case concerning review of the Administrator's order granting a special exception to one of his general regulations, we are mindful that the legislative history of the Price Control Act strongly indicates that judicial review of the Administrator's general regulations and orders was intended by Congress to be limited to relatively few of the millions of people who would be more or less affected by them. Congress did not provide for protest and judicial review of general price orders by the great mass of consumers because of an apprehension that this might cause delay and difficulty in administering the Price Control Act with the efficiency and expedition deemed

necessary to accomplish its broad purpose.[5] Only a few categories of persons whom the Act affected and whose protests, if reviewed would not have these consequences, were specifically permitted by the Act to protest and have general price orders affecting them judicially reviewed.[6] The Administrator and the courts have adhered to this congressional policy. See *e. g. Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503.

Procedural Regulation No. 1 of the Office of Price Administration, 7 Fed. Reg. 971, defined a person as "subject to" a general price regulation or order, and therefore entitled to protest and obtain judicial review of it, only when such regulation or order "prohibits or requires action by him." The Emergency Court of Appeals sustained the regulation which contained this definition. *Buka Coal Co.* v. *Brown*, 133 F. 2d 949, 952. But in other special situations not directly involving general price-fixing orders the words "subject to" have been construed more broadly by the Administrator and the Emergency Court of Appeals.

Revised Procedural Regulation No. 1, 7 F. R. 8961, promulgated by the Administrator, provides that agricultural producers may protest an order which denies them a subsidy granted by Congress as one of the mechanisms of the price control program, the regulation stating that such a producer "shall be considered to be subject to a maximum price regulation." And in *Illinois Packing Co.* v. *Snyder*, 151 F. 2d 337, the Emergency Court of Appeals held that meat packers, denied such a subsidy under

[5] The congressional purpose in this regard has been summarized in our previous decisions in *Yakus* v. *United States*, 321 U. S. 414, 423, 431–433, 439, 441 and *Bowles* v. *Willingham*, 321 U. S. 503, 513, 520–521.

[6] Section 4 (a) of the Act lists the classes of persons to be punished for disobedience of the provisions of a regulation or order and therefore *ipso facto* "subject to" it as sellers of commodities, buyers of commodities in the course of business and landlords.

regulations of the Defense Supplies Corporation promulgated under the same authority on which Office of Price Administration orders were based, were subject to and could protest against such regulations. The Court there said that:

> "If anybody could be 'subject to' a provision of the subsidy regulation, complainant certainly would meet this requirement, since it claims to be excluded from the subsidy by a discriminatory and unlawful condition inserted in the subsidy regulation by Amendment No. 2. Since § 204 (d) confers upon this court 'jurisdiction to determine the validity of any regulation or order issued under Section 2,' and since Amendment No. 2 is such a regulation or order, it is inadmissible to put upon the phrase 'any person subject to any provision' of a regulation under Section 2 an interpretation which would make it impossible for anyone to invoke our jurisdiction in this type of case, especially one who, like complainant, is most immediately and directly prejudiced by the challenged provision of the subsidy regulation." *Illinois Packing Co.* v. *Snyder*, *supra*, at 338–339.

Thus it appears that the Administrator and the Emergency Court of Appeals have determined that the question of whether a person is "subject to" the Act is dependent to some extent upon whether the order immediately, substantially and adversely affects him, as well as whether the order requires or prohibits action by him. Under these standards we think the tenants here were "subject to" the order.

Whether the regulations gave the tenants a "vested right" to remain in possession is not decisive of their right to protest or obtain judicial review. However that may be, general regulations prohibited these landlords from evicting the tenants unless the Administrator granted a certificate. The Emergency Price Control Act was intended in part to prevent excessive rents in the public

interest,[7] and the very anti-eviction regulations under which the Administrator granted the eviction certificate here were specifically designed to prevent manipulative renting practices which would result in excessive rents.[8] Those regulations have been held valid by the Emergency Court of Appeals, *Taylor* v. *Brown*, 137 F. 2d 654, 662–663,

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[7] Among other provisions showing that such was the purpose of the Act, § 2 (d) provides in part that the Administrator may promulgate regulations or orders to "prohibit speculative or manipulative practices . . . or renting or leasing practices (including practices relating to the recovery of the possession) . . . which in his judgment were equivalent to or likely to result in price or rent increases . . ."

[8] The landlords here claimed to be recent purchasers of stock in a cooperative ownership arrangement. Regulation 6 (b), here involved, was promulgated, according to the Administrator, for the following, among other, stated reasons:

"In recent months the problem of evictions and potential evictions in connection with the sale of stock in cooperative housing corporations has reached serious proportions. Apartment houses and other multiple-unit premises are being sold to cooperative corporations. These corporations in turn sell stock in the corporation which entitles the purchaser to a "proprietary lease" of a dwelling unit in the structure. In selling stock in the cooperative, tenants usually are first approached. They are under heavy pressure to purchase stock because the alternative is likely to be eviction in favor of the ultimate purchaser of the stock. If the stock is not purchased by a tenant, it is then sold to another person who obtains a proprietary lease of the tenant's dwelling unit and seeks possession of that unit for personal occupancy.

. . . . . .

"In the past cooperative housing corporations were virtually unknown in most defense-rental areas. Since rent control there has been a tendency to make more frequent use of the device and there is every indication that this will accelerate.

. . . . . .

". . . . During recent months, as the housing shortage has become more acute, the cooperative corporations or other owners of this stock have begun to sell it to purchasers who become entitled to proprietary leases." Statement of Reasons Accompanying Amendment 17 to the Rent Regulation for Housing for the New York City Defense Rental Area.

and their validity is not here challenged. If these tenants cannot "protest" this order issued under these regulations, no one can; and if they cannot challenge it in the Emergency Court of Appeals, they cannot effectively challenge it at all.

We cannot say that tenants who are about to be evicted from their apartments on account of the order are not "subject to" it. We are persuaded that these tenants would be required to act by the issuance of the certificate. They would either have to move themselves and their possessions to another abode, which might be difficult or impossible to obtain, or undertake defense of eviction proceedings in the State courts, which proceedings, but for the certificate, would have been barred by the regulation promulgated under the Act. For the same reason, it seems apparent that they would be immediately, substantially, and adversely affected by the order.

This situation is altogether different, in terms of administrative complications and the impact of the order on the individual, from one in which a consumer member of the public wishes to attack a general price-fixing regulation which will require him to pay higher prices, or even a tenant to pay higher rent. For this reason, the legislative history relied on by the Administrator, thought to indicate a purpose not to make such general price-fixing orders open to widespread challenge, has no relevancy here. While the scope of judicial review authorized by the Act is a limited one, *Illinois Packing Co.* v. *Snyder*, *supra* at 339, we think that these tenants were entitled to have their protest considered by the Administrator and that the Emergency Court of Appeals has jurisdiction of their complaint.

Reversed.

THE CHIEF JUSTICE, MR. JUSTICE FRANKFURTER and MR. JUSTICE BURTON dissent.